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MOORE *v.* ADAM.

PROCEEDINGS

IN A CAUSE

TRIED IN THE COURT OF KING's BENCH,

DECEMBER 21, 1815,

FOR

SPECIAL DAMAGES,

IN CONSEQUENCE OF

AN ASSAULT

COMMITTED AT ALICANT, IN SPAIN.

Taken verbatim in Short-hand by Mr. Gurney.

RESPECTFULLY DEDICATED TO

LORD ELLENBOROUGH AND TO THE PUBLIC;

WITH

A Preliminary Statement and Notes,

BY THE PLAINTIFF.

TO WHICH IS ADDED,

AN APPENDIX;

Containing the Brief and Instructions given by the Plaintiff to his leading Counsel Mr. Sergeant Best.

Magna est veritas et prevalebit.
All's well that ends well.
Hay mas dias que longanizas.

London:

PUBLISHED BY R. S. KIRBY, 11, LONDON-HOUSE YARD, PATERNOSTER-ROW;

AND TO BE HAD OF ALL OTHER BOOKSELLERS.

1816.

J. Gillet, Printer, Crown Court, Fleet Street.

TO

LORD ELLENBOROUGH.

My Lord,

The modesty of Col. Adam's friends has induced them to refuse their "Imprimatur" to the daily press of London, for the publication of the brilliant eulogium passed upon him by his Majesty's Attorney-general in Guildhall on Thursday the 21st inst., which makes me take the liberty of thus presenting it to the public under the auspices of your Lordship.

If your Lordship deigns to peruse such part of the following pages as your Lordship has not hitherto seen or heard, I flatter myself that your Lordship will be enabled to perceive that I had a soul alive to the sufferings, and a purse open to the wants of my fellow creatures; even at a time that I might be thought

writhing under the pressure of wrongs and injuries, heaped up with a liberal hand by the besotted tools of despotism. On the other hand I *unfortunately* must state to your Lordship that no one human being was benefited by the conduct of Col. Adam, himself excepted; unless it can be supposed that my kitchen and my "splendid house" were in any, though the lowest degree, calculated to lighten the labours and to heighten the pleasures of a French cook and of an Italian body-man in his suite; for strange as it may appear to your Lordship, the Rev. Chaplain of the forces was most certainly, not accommodated with the quarters of that "distinguished officer."

I have the honour to be,
with due respect,
My Lord,
Your Lordship's most Obt. Servt.
THOS. MOORE.

63 Montague Square,
Innocents day, 1815.

TO THE PUBLIC.

I shall trouble the reader with very few preliminary remarks upon the trial. My principal object, as stated to my counsel, was not to recover damages for a brutal cowardly assault; an act of a man who could conduct himself as the Defendant, could not disgrace me in my own opinion, or in the opinion of any rational being.

I was a merchant carrying on a very extensive business—I had committed to my charge the interests of many individuals—I found myself obliged, in consequence of the conduct of the Defendant, to desert both their interests and my own. To prove that in my conduct I had not acted either rashly, cowardly, or unwisely, was my object in bringing an action against the Defendant. I was told by my legal advisers that if the loss of my business necessarily arose from the act of the Defendant, I was entitled to recover in damages the amount of that loss. It was therefore apparent to me that the best evidence I could obtain that my conduct was correct, was the recovery of large damages from Defendant. I am aware that nothing could excuse my leaving Alicant, except the firm conviction that my remaining in that

town would have been attended with serious danger to my personal safety, and to my own property and that of others. When the Defendant committed his assault upon me, he was the second officer in point of authority in the town: in fact, he was generally considered the first. He did not do it in a passion, if he had he would have come alone; and immediately upon receiving the supposed insult to my counting-house, from whence the letter had been sent in the name of the firm, and not in mine, instead of watching for two or three hours to get into my private house through a warehouse, in order that his entrance should escape the notice of even the four soldiers stationed in the house, and seizing the opportunity of my being alone to come attended by four persons to administer punishment in the most deliberate manner, as in a judicial character; the numerous attendants could only be chosen to give to this meritorious act the *eclat* it merited, and that very evening it was published through the town.

The army consisted of a motley crew of Calabrians, Sicilians, Poles, Germans, Spaniards, and English. My personal enemies at the same time were most violent; they consisted either of those who were profiting of the

abuses I had opposed and wished to remedy, or of merchants who wished to raise themselves or their houses on the ruin of my mercantile establishment.

Can any honest man lay his hand to his heart and say, that without exemplary satisfaction and redress I would not have been exposed to the greatest personal danger? To whom could I look for redress? the civil authorities were silent; to the General I had made former complaints which were disregarded. The Defendant had taken care that it should not be in my power to prove the true nature of the assault. I did all that was in my power to call the attention of the General: I had the billet glued on the door, with the words "Quartered by direct force." I inserted several advertisements in the Diario, which must have attracted the attention of the General, but in vain. I feel that I was perfectly right in acting in the manner I did; and I feel convinced that no man will, on reflection, deny that I acted as I ought. I hope that I shall convince the impartial reader that I brought this action not for the purposes of revenge, but for the purpose of proving to the world and my particular correspondents, that my conduct was fully justified: and I cannot help being fimly convinced, that if a full statement of the facts

had been made to the jury, that their opinion would have coincided with mine, that my losses were caused by the unlawful act of the Defendant, and that I was entitled to the full amount of the damages laid against Defendant.

By some unaccountable influence, the periodical press of the day was induced to exclude from its columns all account of the trial, although it be of a popular nature. In this sacrifice of principle the *Chronicle—proh pudor!*—the *Times*, and the *Post*, could agree; though the periodical press is considered to be the best check on all public characters: and pernicious must be the consequence to the happiness of Englishmen, if public men can by any secret influence conceal their proceedings from public notice. Yet as it might happen that an unduly biassed advocate might be tempted to desert his client, and a judge influenced by strong feelings might give a partial charge to the jury, relying on the fact of the periodical press having been silenced, I have felt it my duty to shew that notwithstanding that press may be silenced, there are other methods of appealing to the inhabitants of Great Britain and the world on the conduct of an individual, the jury, the counsel, and the judge.

STATEMENT,

&c. &c.

HAVING received intelligence in London, that, in consequence of the departure of Mr. Strange, my partner, from Alicant, my property there had been considerably deteriorated, and being urged at the same time by my mother to proceed thither without delay, to rescue her house and furniture from the hands of General Roche, who she heard had purchased her old stock of wine from the servant whom she had left in charge of it, I proceeded to Cadiz, and from thence to Alicant, where I arrived in October, 1812.

On my arrival, I was astonished at the dissensions and animosities that appeared to reign uncontrolled. I considered it as much my duty as it was my inclination, to contribute as much as possible to establish a good

understanding between the English and Spanish nations. Imagining the chief obstacle arose from the false interpretations, and the erroneous reports, to which the difference of languages and customs gave rise, I thought myself, from an accurate knowledge of both the English and Spanish languages, calculated to accomplish it; the more particularly as I discovered every disposition thereto in the Governor Brigadier-general Caamano, a distinguished officer (who commanded the artillery at Badajoz, and had almost alone opposed the surrender of that fortress to the French, when Lord Wellington was so anxious it should hold out a few days after the retreat of Massena from Torres Vedras).

Having occasion to call upon the Governor on the 17th of October, about busines, I found him in conference with Major Lang, acting for the Quarter-master-general of the English army, and two or three foreign officers attached to that army, and the Count of Soto-Ameno, principal alcalde, with some of the inhabitants. The Governor requested me to act as interpreter between the parties. To Major Lang's complaints of the difficulty of obtaining quarters it was objected, that persons of all nations and denominations, including Spaniards, were constantly requiring quarters,

under the plea that they were employed in the service of his Britannic Majesty, and that it was impossible to know who they were, or what was their rank.

It was finally agreed that no billets should in future be given to persons of the latter description, without a written order from General Donkin, quarter-master-general; and that Major Lang would make out a list of those actually at Alicant for whom he required lodgings, stating those they then held. The Chief of the Spanish staff, who was also present, engaged to bring an accurate list of the officers in garrison who were entitled to quarters: an accurate list was promised to be made out by the municipality of all the houses at Alicant capable of accommodating lodgers; and it was agreed, that as soon as these preliminary measures were executed, four British and four Spanish officers should go round with some persons of the town to see that the persons quartered were accommodated according to their rank and the means the place afforded. The Governor further suggested, that, subsequently, certain divisions of the town might be allotted exclusively to the service of the English army, which Major Lang appeared to approve.

In about an hour after, Major Lang called

upon me at my private house, to enquire who was the elderly gentleman we had just parted from; and stated that he had been looking for quarters for a wounded English officer, whom he was obliged to lodge in the same room with himself, and that this elderly gentleman had given him a billet on a house, but he found it already occupied, and he wished to return it. Upon my informing him he was the Count of Soto-Ameno, he departed. In the course of the same evening, I called upon him at the Quarter-master-general's office, to state the case of a Spaniard, who had come almost frantic to the Governor's in the morning, exclaiming that an English officer had turned his mother and family out of their house into the street. I pacified him, assuring him that if he had been really ill-treated, he would obtain redress from the English General. Major Lang was not at the Quarter-master-general's, but General Donkin, who was going to bed, sent a person with me to his lodgings. In consequence of the conversation that took place at this interview, I called upon him the next morning, and we went to the house of the Spaniard, Joseph Sanchez. His house only consisted of one room, with an alcove and another room over it which served for a kitchen. A young Eng-

lish officer, in the Portuguese artillery, had taken forcible possession of it, driving out the women, and locking the doors, though Sanchez immediately ran to the town-house with the billet the officer presented, and brought it back with an endorsement on it to another house, stating as a reason that Sanchez's house had not room to lodge any person. Major Lang had some conversation with the officer's servant, and then took the billet, and put it carefully in his pocket-book. I observed to him it afforded a proof of the little regularity there was at the Town-house in granting billets; but that it was to be hoped the plan agreed upon would put an end to all this confusion. I then, in the presence of Major Lang, explained to Sanchez's mother and the other women, who had taken refuge in the entrance of a neighbouring house, that the chief blame of what happened lay with the persons at the Town-house, who gave billets improperly, and persuaded them to have patience, as the subject was in a course of accommodation; and Major Lang promised to have justice done to them.

Major Lang stated, that frequently a billet was given at the Town-house, and upon an officer going to the house, he was desired to sit down, whilst some person ran to the

Town-house, and came back with another billet, which the owner gave to the officer, telling him there was no room in his house; and in this manner the officer might be sent through half a dozen or more houses. I resolved to give the wounded officer a lodging in my house, and immediately called upon the Count of Soto-Ameno, who, though he had one of the largest houses in the town, had nobody quartered in it except some English soldiers, who were merely in the entrance. The Count, at my desire, wrote an order to the Town-house for a billet on my house in favour of Captain Pearson, of the 81st, wounded in the expedition to Denia. I went with it to the Town-house, and found a clerk had a parcel of printed bits of paper in blank in a drawer, which he filled up as he pleased. I observed to him these papers stated the bearer to be sent by the Governor, and therefore desired him to keep the Count's order, and to give it to no one. Major Lang had been with me at my private and at my mercantile house, and was made acquainted with the situation of my property, of which the following order, obtained by Mr. Strange, my former partner who had returned about three weeks before me to Alicant from Majorca, where he had taken refuge in the preceding month of January, will give some idea.

"It being equitable that the burthen of quarters which the inhabitants of this city are suffering should be equally divided, and according to the capacity and convenience of their houses and property; and complaint having been made to me that the house of Messrs. Moore and Co. has experienced many oppressions, having been deprived not only of four warehouses employed in their commercial business, without even one being left for that purpose, but that five different persons are billetted in their dwelling-house, so that they have not sufficient room left for carrying on their business: on which account it becomes necessary that Y. L. should take measures for immediately freeing it of four of the five persons billetted therein; and subsequently, if the scanty supply of quarters should render it necessary, they will be burthened in due proportion; for which purpose it will be necessary that you make it manifest to me that there is no inhabitant, without exception, that has not some person billetted on him.

"God preserve you many years."

Alicant, &c. Oct. 6th, 1812.

One of my objects at Alicant was to free my mother's house from General Roche and his dependents. The Governor gave me the following order to Mr. O'Shea to evacuate it:

"Be pleased to evacuate the house you occupy, and which belongs to Mr. T. Moore, who demands from me possession thereof, offering for the custody of

whatever you have under your charge belonging to the Major-general Mr. Philip Keating Roche an adequate apartment in the other house which the said Mr. Moore has in the baranquet; for I, under this date, advise the billetting committee to furnish you the necessary billet to authorise you to present yourself with it. God preserve you many years.

"JOAQUIN CAAMANO."

Mr. Henry O'Shea. *Alicant, Oct.* 11, 1812.

Major Lang, when he received the billet I got sent to him, wrote the following note:

Quarter-master-general's Office,

"SIR, *Oct.* 18, 1812.

"On returning to my house, I found the inclosed billet. Being aware that you ought to be free from such visitors, I have not allowed it to be used, and I send it to you as a new proof of the conduct of the junta. I am SIR,

"Your very obedient servant,

(Signed) "R. LANG.

"Ass. Qm. Gen."

I returned him the billet, explaining my reasons in writing for accommodating Captain Pearson in that manner, and adding, that if he got redress for Sanchez, I would engage that the Governor should have it in his power

the next day to make General Mackenzie an offer of a proper lodgment for some wounded soldiers, which the General had told me he was in great want of.

On the morning of the 31st of October, I met Major Lang in the principal street; and whilst talking together, we were accosted by an English officer, who enquired of Major Lang when the domiciliary visits were to take place. Major Lang replied, putting his hand to some papers in his pocket, that he had his lists ready, but that the Governor, after fixing upon ten o'clock that morning to receive him on the subject, had not kept his appointment. A few minutes after, I met the Governor, and told him what Major Lang had said, and strongly urged the necessity of being punctual in the fulfilment of his engagements with English officers, they being accustomed to punctuality. The Governor expressed his surprise at what I told him, as he had shortly before met Major Lang in Colonel Adam's office, when he had informed him through the interpretation of an officer belonging to that office, that he had not had time to get his lists ready, and in consequence it had been agreed to put off the meeting to the subsequent day.

On the 22d of October, I went to the Governor's, and soon after Major Lang, Lord Frederick Bentinck, Lieutenant Peddy, and Lieutenant Roquefeuille, also arrived. Major Lang declared to the Governor, (I acting as interpreter,) that he had orders from the British General not to have any thing to say to the Spanish officers or their quarters, and he also objected to giving in the list of the English officers, which he had in his hand, but stated that he, and the other English officers with him, were ready to go round their quarters with any person the Governor might appoint. Upon hearing this, the four Spanish officers made a bow and retired. The Governor said this was not what had been agreed upon, nor could it answer the purpose which was in view when this arrangement was proposed; he, however, called in the two town-adjutants to accompany them, with a member of the committee for billeting. The adjutants were immediately objected to as old and useless. The Governor then said he did not know what they wished for, or proposed doing. There being, among other persons present, one in an officer's uniform, with a cross upon his breast, he was chosen by them; and with the member of the committee, a little timid man, who appeared quite confounded,

accompanied them. I asked this Spanish officer what corps he belonged to, and he answered he was a stranger at Alicant, belonging to no corps, but *en comision*, that is, sent upon some commission to Alicant.

I offered to the Governor to accompany the party, in order to prevent, if possible, any misunderstanding, as neither of the Spaniards spoke a word of English, or any language but their own. The Governor expressed himself much obliged to me, and Lord Frederick at first seemed pleased at my offer; but he was taken to one side of the room by Major Lang and Lieutenant Roquefeuille, and after some conversation he returned to me, and rather objected to my accompanying them; but as the reason he assigned was the trouble it would give me, I assured him it would be no trouble, but a pleasure, as I wished to contribute as much as was in my power to a friendly arrangement, in which, as an inhabitant of Alicant, I was personally concerned: upon which Lord Frederick answered, that being the case, he would be very happy at my accompanying them.

The party then proceeded; and Major Lang hurried Lord Frederick into a house about thirty yards off, and after going up one flight of stairs was already returning, (and made

Lord Frederick observe the bad smell of algarovas, saying with an emphasis, " these are the quarters of the commissary in chief of the British army,) before the Spaniards had ascended two or three steps. I told them it would be but proper to point out to the Spaniards what was the accommodation afforded in that house (which was the captain of the ports') to the commissary, or which were his apartments, if there was a complaint of the insufficiency of them. I called out for some servant to come down for that purpose, but Major Lang interposed, and said there was not time for doing any such thing, and that he must immediately dispatch Captain Peddy and Lieutenant Roquefeuille on other business. I told him that in that case he must be aware that we were all losing our time, but that, however, I would continue to accompany them.

Major Lang and Lieutenant Roquefeuille again took Lord Frederick apart; and after a few minutes consultation, Lord F. came up in a very flurried manner to me, and stated that he understood that I stood ill with the *Junta*, and would only cause dissension; that, therefore, he would be much obliged to me not to accompany them any farther. I replied, that I would certainly not press my

company upon them, but that I would convince him that the idea that I would cause any dissensions, on account of being disagreeable to the *Junta*, was not correct. I therefore called the Spaniard who accompanied us, and explained to him what Lord F. had said; he immediately declared to Lord F., who understood Spanish, that nothing could be farther from truth, and that he was very anxious that I should accompany them. I then departed.

Convinced that my interference could be of no use, as no satisfactory arrangement appeared to be desired, I then determined on taking upon myself the exclusive management of my business; and, in order to prove my individual readiness to contribute my share to the accommodation of the British army, I made the following offer to the Governor:

Alicant, 25th October, 1812.

"In order to facilitate the establishment of harmony on the subject of quarters, I propose that the Commissary general of the English army should be lodged at my house in the Baranquet, placing at his disposal for this purpose the whole of the principal floor, viz. the dining-room and adjoining bed-room, anti-room and large drawing-room, large bed-room with adjoining dressing-room, and another smaller bed-room, with the use of the kitchen, and a

room on the ground-floor for servants; but the apartments given to a Mr. O'Shea in the first floor must first be opened, in order that the Portuguese officer, commandant of artillery, actually in possession of the dining-room, &c. &c., may go down to one of them. This offer is made upon condition that the part of the Baron of Fenestrat's house occupied by the said commissary as offices shall be given as quarters to Lord Frederick Bentinck, brother to the Duke of Portland; that the other apartments, under the Portico of the Plaza del Mar, also occupied by said commissary, should be given to an English officer of artillery, who lodged himself by force in a small house of Joseph Sanchez in the Plaza de las Barcas, in front of the fountain No. ; and finally, that the present quarters of Lord Frederick Bentinck shall be at the disposal of Captain Pearson, of the 81st regiment of infantry, wounded in the expedition against Denia, and who is at present in my house, in case he or I should so desire it.

"THOMAS MOORE."

Captain Pearson, who on the 20th had written to thank me for accommodating him at my house, afterwards sent me a very uncivil note, which I took to Colonel Adam, and asked his advice, but he refused to give any opinion upon the subject. I then went to Captain Pearson at Major Lang's, and expostulated with him upon the impropriety of his note; he apologized, and attributed the

expressions he had made use of to his fear of disappointment. I told him I had wished to give him an apartment at my mercantile house, which I expected to have been able to do immediately; finding, however, that was not likely to be the case, I had determined to get an apartment prepared at my private house, and that he might come to it on that or the following evening.

On his arrival, I invited him to take chocolate with me, and read the English papers: he was very civil, and stated that that was the second time he had been wounded in the service of Spain. I replied I was not surprised at his expecting some gratitude. On the next day, I sent to invite him to dine, which he declined; and subsequently he behaved in the most unaccountable manner, for which I have never been able to assign any reason. In consequence of his ill conduct, I addressed the following letter to Colonel Adam, he having informed me that to him all complaints of misconduct against any individual belonging to the allied army ought to be made.

"SIR,

"I find myself under the necessity of informing you, that after I had retired to bed last night, and about half an hour after the key of the street door had been brought to my bed-side, which, according

to my orders, is done every night when the clock strikes ten, I heard some person on the stairs ask for the key; upon which I requested Mr. J. Budd, who sleeps in the same room, to give it to the servant to open the door, and bring it back again; and, although he did so instantaneously, I heard the voice of Captain Pearson at my room door; upon which I called out to enquire what was the matter; at the same moment I heard Captain Pearson enquiring for me, and Mr. Budd answering that I was in bed, and I had not time to say I could see no one, when Captain Pearson presented himself in my alcove; and after looking about, and using insulting and menacing language, he departed to his room below, where it seems one of the two officers who had been with him remained all night, letting the other go out alone.

"I have to observe that Captain Pearson is billeted in my house at my own desire, in consequence of the representation made to me by Major Lang, deputy quarter-master-general, that he had been severely wounded in the expedition against Denia, and that he could get no lodging for him, and that I proposed to give him a lodging in my house for a few days, under the impression that a satisfactory arrangement would immediately take place for the billeting the British officers in Alicant; an outline of the plan for the purpose having been agreed to in my presence, between the Governor of this city and Major Lang. Under these circumstances, it is impossible for me to continue exposed to violence and insult, on the part of Captain Pearson, or any other persons he may think proper to have admitted into my house

at any hour of the day or night. I shall therefore make a formal complaint respecting him to the constituted authorities; but I think it my duty, as a British subject, first to lay this statement before you, for the information of the Commander in Chief of his Majesty's land forces at Alicant.

"I am most respectfully, Sir,

"Your very obedient servant,

(Signed) "THOMAS MOORE."

Plaza de Ramiro, 6th Nov. 1812.

Colonel Adam, adjutant-general to his Majesty's forces at Alicant.

On the 11th of November I met Colonel Adam: I had in my hand the following note I had just received from Captain Pearson:

"SIR,

"I request you will play *the fool* no longer, but return my servant the fork which he lent you, or take the consequences.

(Signed) "G. PEARSON, Capt. 81st."

I shewed it to Colonel Adam, who, on perceiving its contents, said it was very improper indeed, and took it out of my hand. I then told him that I had had, a short time before the receipt of this note, some words with Lieutenant Roquefeuille, who had insisted to deliver to me at my private house, at Plaza de Ramiro, a letter from General Clinton, ad-

dressed to my mercantile house, in Baraquet-street. Upon this Colonel Adam assumed a different tone, and said that it was *he* who had sent Lieutenant Roquefeuille to me there. In answer, I endeavoured to explain to him my reasons for having made a positive rule not to receive any letters at my mercantile firm, except at the counting-house, and added, "I imagine I have just as much a right do so as your father would have, in London, to refuse to receive persons on law business except at his chambers." Having now arrived at the commencement of the Mole, he raised his voice, and said, as if his words were calculated for effect on the by-standers—"I will hear nothing against a British officer," at the same time laying his hand upon his sword, and immediately embarked to go on board the Admiral.

What passed upon this occasion made me particularly anxious that my conduct as to the delivery of the letter by Lieut. Roquefeuille should not be misrepresented to the Commander in Chief, particularly as I received at this time anonymous letters, stating that the English Commissary considered me as mad; and I knew that insinuations to that effect were invidiously circulated by persons deeply interested in having them believed. I

I therefore, on my arrival at the counting-house, addressed the following letter to General Clinton:

Alicant, 11*th Nov.* 1812.

"We have been honoured with your letter of yesterday's date, which was delivered at our counting-house at about a quarter past three, after having been refused by Mr. T. Moore at his private house, in Plaza de Ramiro at about a quarter past twelve, not, we can assure you, from any disrespect, but solely because it was addressed to us here, and because he had laid it down as a rule to take no letters on business except at the counting-house.

"We observe that on returning to us the papers we had taken the liberty of inclosing to you, you say that you apprehend there will be no question arise in England as to the due discounting, by the Lords Commissioners of his Majesty's Treasury, of the bills drawn by Mr. Commissary-general Burgmann, and negotiated here by Mr. Daniell, the Deputy Commissary-general to the army serving under the command of Lieutenant-gen. Lord William Bentinck. Of this we were perfectly convinced—but we conceived ourselves bound, and we are sure that we were in fact bound in justice to our correspondents and to ourselves to take notice of the irregularities we found in the bills delivered to us, upon which we shall decline troubling your Excellency further.

"We have the honour to be, &c.

"Moore and Co."

Major-gen. W. H. Clinton, &c. &c. &c. Alicant.

On the 12th of November, I received the following note from Captain Pearson:

"If you don't *instantly* return the fork which you *stole* from my servant, I will make reprisals upon some part of your property.

(Signed) "G. PEARSON, Capt. 81st reg."

Mr. Moore.

I now resolved to address General Donkin, as quarter-master-general; but wishing to have Capt. Pearson's original first note in my possession, and to ascertain whether Colonel Adam, as adjutant-general, would take any notice of it, I addressed the following letter to him:

"SIR,

"I shall be obliged to you to return to me by the bearer, or in any other way that may most meet your convenience, the note which Captain Pearson, of his Majesty's 81st regt. of foot, sent to me on the day before yesterday, and which you took from me upon my handing it to you to inspect, on your way to the Mole on the afternoon of the same day.

"I have the honour to be, SIR,

"Your most obedient humble servant,

(Signed) "THOMAS MOORE."

Plaza de Ramira, 13th Nov. 1812.

Colonel Adam, &c. &c.

Plaza de Ramira, Alicant.

Col. Adam returned the note under a blank cover, marked in the corner "Adjutant-general's Office."

On the 13th or 14th of November, I was informed by my mother's housekeeper, that Captain Pearson had disappeared with his servant; but how she could not tell, as nobody saw him go out. I was afterwards told that he let himself out of the window, for what purpose I cannot guess. On the 16th, I sent the annexed letter to the quarter-master-general's office, which the bearer saw delivered into the hands of Major Lang.

"SIR *Alicant, 16th Nov.* 1812.

"I beg leave to transmit to you copies of a letter I wrote to Captain Pearson, of the 81st, quartered in my house, and of two notes I received from him; one whilst I was in the act of writing my letter, and the other on the evening of the day after. I have further to inform you, both he and his servant disappeared from my house some time on Friday, and not having returned that night, I sealed up the doors of the apartments which he occupied; they having been previously locked up by my mother's housekeeper.

"I have the honor to be, Sir,

"Your most obedient hum. servt.

(Signed) "THOMAS MOORE."

"P.S. Neither Captain Pearson nor his servant have made their appearance here since Friday.

"*Plaza de Ramiro,—Monday morning.*

"*To Major-General Donkin,*
Quarter-master-general to his Majesty's Land Forces at Alicant."

"SIR,

"Your servant having informed me yesterday, that a knife belonging to you had been stolen from the kitchen (a companion to a fork which he presented to me, and which I keep in my possession) during half an hour that he had been absent at the barracks, I immediately made the necessary inquiries, and ascertained that nobody had been there but a little boy, who assists the masons; he denied having seen any such thing: but I am resolved to have the business cleared up. I therefore write to you in the first instance, to know if you are aware, that your servant has made any such complaint; and whether you find any thing belonging to you missing, since I admitted you into my house, in consideration of the wound. Major Lang represented to me you had met with in the expedition to Denia; and which you repeated to me, saying it was the second wound you had suffered in the cause of Spain—having been wounded before at Corunna. Your servant told me yesterday nothing but the knife had been stolen; but I wish to have the point settled, as I am resolved to find the knife, if it be above ground, for you. I immediately gave your servant a knife and fork in lieu of the knife he said had been stolen, and of the fork he delivered to me; which he soon after returned with your compliments, saying you did not want them. I am, Sir,

"Your humble servant,

(Signed) "THOMAS MOORE.

Plaza de Ramiro,

11th Nov. 1812.—*Wednesday, 3 p. m.*

To Captain Pearson, of his Majesty's 81st Regt. Foot.

"SIR,

"I request you will play *the fool* no longer, but return my servant the fork which he lent you or take the consequences.

(Signed) "G. PEARSON, Capt. 81st."

"If you don't *instantly* return the fork which you *stole* from my servant, I will make reprisals upon some part of your property.

(Signed) "G. PEARSON.

Mr. Moore. *Capt. 81st Regiment.*

Finding that no notice whatever was taken of these letters and notes by the quarter-master-general, I addressed the following letter to General Clinton, inclosing copies of my letters of the 6th November to the adjutant-general, and of the 16th to the quarter-master-general, with copies of my letter to Captain Pearson, and of his notes to me:—

"SIR, *Alicant, 18th Nov.* 1812.

"I find myself under the disagreeable necessity of troubling you with the annexed copies of my letters to Colonel Adam and Major-General Donkin; and of stating to you, that not having received any answer to these letters, I shall think myself justified in taking possession to-morrow, at midday, of the apartments I had allotted to Captain Pearson. I should wish some person, deputed by you, to be present at the breaking of the seals, with

some one of the many officers who visited Captain Pearson here, to whom I might deliver his fork—but I do not presume to dictate to you any such measure; only you will permit me to add that, if I do not hear from any one on the subject before one o'clock to-morrow afternoon, and that I find any part of my property, or that of my mother's, missing, I shall be obliged, though reluctantly to suppose it embezzled, if not stolen, by a British officer, whom I admitted into my house in the manner stated in the annexed letters. I have the honor to be, Sir,

"Your most obedient servant.

(Signed) "THOMAS MOORE.

"*Plazo de Ramiro.—Wednesday, 3 p. m.*

"P.S. I think it proper to mention, that, having made a complaint in person to the late governor on the evening I received the last note, he answered that he did not think himself justified in interfering with the conduct of an English officer whilst confined to threats, and that I should make my complaint to you; but that, if he actually took any of my property, the case would be altered.

"*Major-Gen. W. H. Clinton, &c. &c. Alicant.*"

By this communication I proposed to myself not merely to complain of the treatment I had experienced, but as the dissensions existing on my arrival at Alicant continued unabated, to put upon record, that an agreement had been entered into for the billeting of the British officers in Alicant, in my pre-

sence, between the governor of the city and Major Lang, and that I had stated it on the 6th of November, in writing, to the adjutant-general of the British army, to whom I had verbally communicated before what was going forward on the subject. I was convinced that, if this agreement was carried into effect, it would contribute as much to the comfort of the officers as to the ease of the inhabitants, and I resolved to endeavour to get it acted upon. By the disappearance of Captain Pearson, I was at length free of personal annoyance at all hours of the day and night; and I determined to continue so if possible, by keeping the house in Plaza de Ramiro, in which I then resided, and which was my mother's private residence—at my sole disposal.

The mercantile house in Baranquet-street, in which I had formerly lived, consisted of three stories, with seven or eight rooms on a floor, besides the ground-floor. It was now evident, that the offer I had made to General Caamano would not be accepted, as he had been recalled to Cadiz; I therefore determined to make such alterations in this large house as would enable me to accommodate four persons on the principal floor, with a sitting and bed-room each; besides placing four rooms on the upper floor, and three, if

necessary, on the lower floor, with a kitchen and two large rooms on the ground-floor, for servants, at the disposal of the proper constitutional authority for the billeting of the officers of the combined army.

The power of enforcing all municipal regulations was, by the constitution, lodged exclusively in the Ayuntamientos, or common-councils of mayors and aldermen, annually elected by the inhabitants; and this body was not authorised to delegate it to any one. They were naturally the persons best calculated to undertake the billeting of the army, and they were, by law, responsible for the proper execution of the authority confided to them. However, the manner in which the business was conducted was the following:—A clerk at the town-house had a parcel of printed papers in a drawer; these papers purported to be in the name of a nominal junta only; and they were not signed by any one, but had merely a little flourish of a pen, affixed at foot. Upon being applied to for a billet, this clerk delivered one of these scraps of paper, filling up the blank with the name of the first person who came into his head, always excepting those who paid him or his employers for being excepted. Frequently when the person to whom it was addressed received it, he ran to the town-

house with a shilling, a dollar, or more, according to the nature of his case, and brought back a new billet on some of his neighbours in exchange for the one presented to him. What consequences could be expected from such a way of proceeding in a place situated as Alicant? I resolved to receive no such billets, and by that means to bring the question to an issue, whose fault it was that the agreement made by Major Lang was not carried into effect; and at the same time to induce the chiefs of the two nations to some understanding on the subject; or, at least, to insure the execution of so obnoxious a measure by the responsible and constitutional authority. Not receiving any answer to my different letters on the subject of Captain Pearson, I doubted whether they had been sumbmitted to General Clinton, to whom I addressed the following letter:—

Alicant, 24th Nov. 1812.

"We beg leave to trouble you with the copy of a letter, which we wrote to you on the 11th inst. and which was delivered at your head-quarters by Mr. James Budd to a person representing himself, or represented to him by others, as being your steward, a soldier having shewed him up stairs for that purpose. We disapproved of his delivering it except to a military person; but as the letter itself was of little im-

portance, we should not mention it now, if we had not seen a hand-bill, offering a reward of 100 dollars to the discoverer of a theft, said to have been committed at your head-quarters on the 12th November, between, or from the hours 7, 8, and 9, without specifying morning or evening—though we think the latter was stated in a Spanish printed hand-bill we have an idea that we saw at that time, which made us look at our copy-book to see if it was the evening our letter was delivered in so disorderly a manner; in which case we should have inquired instantaneously what had become of it.

We have the honor to be respectfully, &c.

(Signed) MOORE & Co.

Major-General Clinton,
Head-quarters, Alicant.

I desired a clerk to deliver this letter into the general's own hands; but he returned, and said it had been taken from him at head-quarters by an officer in blue, with two epaulets, whom he believed to be the admiral; and that he could not avoid giving it to him. I did not think it probable that it was the admiral; and being still of opinion that my letters were not received by the general, I wrote him as follows:—

Alicant, 26th Nov. 1812.

"We yesterday instructed our clerk, Dn. Manuel Javaloyes, to deliver a letter from us into your own

hands, or at least to bring us back the envelope, according to the custom of this country, as a sign that you had received it; he has neglected to fulfil our orders, and says that he delivered it to an officer, with epaulets, in a blue uniform. We, therefore, find ourselves under the absolute necessity of troubling you again with these lines by Mr. James Budd, in order to have some proof in our hands that our letters have reached you.

"We have the honour to be, &c.

"MOORE and Co."

"P. S. It was on the 24th we addressed you, and that he took our letter to you, that is to say, the day before yesterday."

Major-general W. H. Clinton, &c. &c. &c.
Head-Quarters, Alicant.

In order to insure the delivery of this letter to the General, I, accompanied by Captain Banner, of the merchants' ship Hope, followed Mr. Budd, who was to deliver it to head-quarters. All the soldiers on guard were foreigners, and intimated that the General was not at home. Mr. Budd came down, and said that Captain D'Aguilar, whom he knew, had told him the General was not at home; upon which an English soldier of light cavalry came forward, and stated, that we might rely that the General was at home: I thereupon desired Mr. Budd to go up

again, and ask Captain D'Aguilar when he could see the General, to present him the letter; but he answered there was no use in his going up, as Captain D'Aguilar seemed resolved he should not present it, for that he told him it was useless, and to advise me not to write any letters, as the General had other things to mind. Upon hearing this, I resolved upon going up myself with Mr. Budd and Captain Banner. Upon the top of the stairs we met a German corporal or serjeant, who, after making signs that there was no one to be seen, perceiving that we were determined on seeing Captain D'Aguilar, conducted us through several back rooms into one where he was writing alone at a table, with three or four officers in the room. Upon my expressing my surprize at the message Captain d'Aguilar had sent me, and my determination to have the letter in my hand delivered to the General, Captain D'Aguilar looked at the others, as if for what to say; upon which one said to him, "say he is not at home," which he accordingly did: and upon my enquiring when he would, he answered, "the next day at twelve o'clock." The next day, exactly at twelve, I went to head-quarters, with Mr. Budd and Captain Banner, when we found an English guard,

who assured us that the General was now really out of town, towards Murcia.

I followed up my enquiries at head-quarters, as to the General's return, every day at twelve o'clock; and being informed on the 30th of November that he was returned, I sent Mr. Austin Moran with my letter, directing him to deliver it into the General's own hands, but he returned with the cover of my letter, and on looking into the inside, I found written, "I received from the bearer a letter addressed to Major-general W. H. Clinton, which I did not fail to deliver to him the instant I received it. HENRY FLOYD." *30th Nov.* 1812.

My messenger told me that he was not permitted to deliver my letter to the General, as a young officer who came out to receive it told him that he could not go in, and that it was the same thing to deliver it to him; that he carried it in, and soon after brought him out the cover. Although he had acted contrary to my orders, so expressly given, I was obliged to have patience, but I still thought the manner of acknowledging the reception of my letter extremely odd. If nothing had been written within the cover, I should have thought the General had opened it, and sent

the cover as a sign that he had done so. If he had received and opened it, I thought that Lieutenant Floyd would have said that he had the General's orders to acknowledge the reception of it; so I still hoped to hear from General Clinton; but several days having passed without my receiving any message to satisfy me that my former letters had been received, I was led to believe they had not; I therefore resolved to adhere stedfastly to my purpose, in the hopes that time would bring me in contact with him, and that I should be able to ascertain the truth, and to remove any unfavourable impressions respecting me that he might have received.

On the 15th of December, whilst I was employed with masons, &c., at both houses, I was accosted at my mercantile house by the Reverend Mr. King, who tendered a printed paper, without signature, for a lodging at my private house, at Plaza de Ramiro; I told him the paper he held in his hand was no authority, and that I could not think of obeying it. Mr. King mentioned the hardship he would feel at not getting a lodging, and being obliged to remain on board. I told him I was sorry for it, and would be very happy to accommodate him as a gentleman, if he had brought me a recommendation from

England, from any body with whom I was acquainted, or even from the Admiral in the bay; but that I was resolved, after the treatment I had experienced from English officers, to maintain my rights, and to yield to nothing but legal authority. Mr. King said he was aware of the bad conduct of others, but that it was hard he should suffer for it, and departed; he returned soon after with Lieutenant Roquefeuille, of the adjutant-general's office, to whom I repeated nearly the same thing, adding, that that piece of printed paper was not of more value than a piece of brown paper. Lieutenant R. said that others were content with that species of billet; to which I replied, the submission or fear of others was nothing to me; that I knew my rights, and was resolved to maintain them.

Lieutenant Roquefeuille then said he would force his way into my house; to which I replied I would oppose his doing so. Lieutenant R. said, "Well, you had better go and take advice upon the means immediately, as I will go and force it now." I replied I did not want the advice of any body.

On my way to dinner, I met Lieutenant Roquefeuille, who said, in a triumphant tone, "Well, I have put him in;" to which I made no reply. On my arrival, I learned that

Lieutenant Roquefeuille had got into the house with Mr. King by threatening my servant, who, according to my orders, refused to open the door, that if he did not open it, he would have him taken up as a prisoner of war, carried to the English head-quarters, and shipped off with his unfortunate comrades. This servant was not a prisoner, but a French conscript from the neighbourhood of Bayonne, who had deserted to the Spaniards. I was informed that Mr. King had come into the house with Lieutenant Roquefeuille, but had gone out again; upon which I ordered my servant to open the door to no person whatever without my authority; and in the course of the evening I ordered the door from the street into the garden, which had been forced open, to be barricadoed; I also sent Carlos Botareli to the lieutenant-governor, to represent to him what Lieutenant Roquefeuille had said to my servant, and to get his *written* authority for keeping him, with a certificate of his being a *pasado*, or deserter, to the Spaniards, which he accordingly sent to me.

On the next day, as I was finishing my dinner with Mr. James Budd, at Plaza Ramiro, I was informed by my servant and the masons, &c., at work on the premises, that several English officers had forced open the

door from the street into the little garden at the back of the house, and were actually endeavouring to break open the door of the house itself. Upon receiving this intelligence, in order to avoid the chance of a personal altercation, I departed, to go to my counting-house as usual; having a day or two before opened the communication with a small adjoining warehouse, I went out by that way into the Plaza; there I saw seven or eight English soldiers in front of my house, pointing their muskets into the lower windows. I took no notice of them, but proceeded on my way. I had, however, scarcely turned the corner of the adjoining street, in which the English head-quarters were, than I was collared by two of the above-mentioned soldiers, who had run after me, and wanted to take me back to my house. I expostulated with them upon their conduct, and at length insisted upon their going with me to the General's quarters, which were only a few doors off; upon which they pointed to two officers standing a few yards off, saying, "there is the General himself." These officers were looking on; and, as I and the two soldiers drew near, one of them addressed the soldiers, enquiring what they were about? one of them hesitatingly said that a Spaniard had pointed

me out as the owner of a house yonder. The General asked by whose orders they were acting? to which he answered in the same confused manner, "an English officer:" to which the General said, in an angry tone, "Aye, that is what I want to know, what English officer; let the gentleman go immediately." I thanked him, and continued my way to the counting-house, supposing the General would follow up his enquiries, and investigate the nature of the transaction in which they had been engaged.

I had been some time at my mercantile house, and I was in a room on the ground floor, with several workmen, clearing it out, for the purpose of increasing my means of affording quarters, when Colonel Adam and Lieutenant Roquefeuille came to me in the midst of them, the former, in an authoritative tone, told me that he had been looking for me at my house, at Plaza Ramiro. I answered I had seen several persons in red attempting to get into my house by force, but had not distinguished whom. Colonel Adam, assuming a higher tone, said it was *he* who had forced open my house. I told him that I supposed he acted in the manner he thought right, and that I, on my side, would act in the manner I thought right. He then, looking

at Lieutenant Roquefeuille said, he understood that I wrote or got things inserted in the Diario, but that, if I said any thing of him, he would horsewhip me, and asked if any of the people present understood English, and upon my answering in the negative, said he was sorry for it. Seeing, at that moment, Mr. Austin Moran, I pointed him out, saying he understood English, and that there was an English captain in the counting-house over head, upon which he repeated what he had said. I told him I did not believe the General would approve of what he was doing; and as to the Diario, that somebody had taken care that nothing good should be printed at Alicant—otherwise, his threats would not influence me either way, as he should see, if he would procure me workmen for a printing-press I had up stairs: (and which I had requested Mr. Athy the acting English consul, to apply to the admiral for:) at this Colonel Adam turned to Lieut. Roquefeuille saying, "You see that?" and they both departed.

The behaviour of Colonel Adam on this occasion was very extraordinary, and would have appeared still more so to me, if I had not been induced at the time to account for it in a way which may now appear equally extraordinary. Colonel Adam's name and

services were known to me in two ways—by some strictures on his rapid promotion in the Political Register, and by his father's reply to them in the House of Commons. On my passage from Cadiz, I accidentally learned, that he was at Alicant; and an officer on board represented, that he heard that he was a haughty tyrannical man.—On my arrival I found he was considered as the officer of the greatest influence and connexions there; and Mr. Athy stated him to be a rigorous disciplinarian.

Finding that he was quartered at Colonel Lascy's, with whom I was intimately acquainted, I paid him a visit; and found him, contrary to the description I had had of him, very gentlemanly and attentive. Afterwards, as I found that Colonel Lascy complained with reason, that he, having a very large family, was dispossessed of the greater part of his house for a public office, whilst others, without one, were not nearly as much incommoded, I told Colonel Adam I would allow him to occupy a certain part of my house, which would be very convenient for his purpose. I at the same time expressed, that my reason for being willing to do so was, that I found him so different from what he had been represented to me, even in age, (for he ap-

peared to me near forty,) telling him the character I had heard of him on the passage from Cadiz: Colonel Adam said, "I dare say he thinks me some terrible ill-natured fellow;" adding, that he was sensible of the inconvenience he put Colonel Lascy to, and had attempted to get into some part of the Countess De Llano's house—but that he must decline my offer with many thanks. I did not press my offer, as I supposed he declined it not to be thought to take part against General Roche. But in different conversations I expressed my surprize at finding such dissensions at Alicant, never having heard of them in Cadiz, though Mr. Vaughan, the secretary of embassy, had told me at parting, that he had no commands for Alicant, as they were perfectly acquainted with what was going forward there by Mr. Tupper, the most active and enlightened agent of the embassy in the Peninsula. Col. Adam inquired whether the English were not so badly looked upon at Alicant before; to which I replied, never; that it was quite the reverse—that they were much liked: and when he told me the way to teach Spanish officers their duty was with a thick stick; I answered that he was very, very ill informed upon the subject, and that, if he or others came there with those ideas, no good could

result. Upon my return home, I was so anxious to remove his erroneous ideas of the Spanish character, that I sent him a private letter I had received whilst in London, from the Countess of Bureta, (celebrated in the account of the siege of Saragoza, which introduced Mr. Vaughan to the public,) with a note stating my reasons for sending it. I was informed by the Governor, General Caamano, that he was intimate with Colonel Adam, whom he considered as his friend; and upon whom he relied to keep up a good harmony with the English generals, as they could understand each other, and corresponded in French. I exerted myself to make him understand the nature of the differences between the governor and the *Comision de Gobierno*, for I found he, as well as others, had their heads so full of the word *Junta*, as not to discriminate between one junta and another, though there were a dozen. Colonel Adam talked of the impropriety of the governor pretending to arrest a superior officer, Major-General Copons; adding, that the Spanish ordenanza or military code which he had, pointing to an old book, authorized General Mackenzie to take the command of the whole. I said I did not know enough of the matter to pretend to justify the governor's conduct

in this respect, but that I understood he only considered Copons in his capacity of an individual of the Comision de Gobierno: but as it was evident there were persons actively employed in creating dissensions, and pushing matters to extremity;—perhaps the best thing that could be done was, for General Mackenzie to take the command, if so authorized, and that probably the governor himself would be satisfied; and that, if he pleased, I would propose to him to make the offer to General Mackenzie. Colonel Adam immediately said, General Mackenzie would not take it upon any condition, and that he only stated he could do so according to the ordenanza. I stated to Colonel Adams the different means adopted, to my knowledge, to disgust the governor with the English: among them the stile of Mr. Tupper's letters, and of one from a subaltern of the commissariat, more like an order than any thing else, in two lines, to prepare warehouses for two cargoes he had determined to land at the firing of the morning gun the next day. Colonel Adam expressed his disapprobation of such conduct, saying, the governor ought to be told not to mind such gentry. I also told him, I had heard the chief of the Spanish staff exciting his national feelings, by misrepresenting the communica-

tion to him of an order from General Mackenzie to his outposts, as an order to himself; which, Colonel Adam said, was too bad, for it was he himself who had communicated that very order.

As, in the course of conversation, Colonel Adam appeared to entertain liberal ideas, (for he approved of the Countess of Bureta's letter, with the exception of its being tinged with sentiments of the old school;) though he said he was obliged to be guarded, as his friends' political sentiments were known to be contrary to those of the persons in power in England, which he condemned, I told him I, for my part, believed they knew nothing of what was going on in Spain; but that I attributed the extraordinary situation of things generally, and more particularly at Alicant and its neighbourhood, to the ignorance or self-interested motives of Mr. Vaughan, Mr. Tupper, and their agents. I afterwards sent him a translation of the preliminary discourse to the Spanish Constitution, and the Inquisition Unmasked, with a note, stating that he might there see what the subordinate agents of the English government appeared, by their conduct, anxious to protect, on the one hand, and to prevent the establishment of, on the other. I had also endeavoured, at his request, to pro-

cure him a good Spanish master, and to contribute to his amusement by lending him the English papers and books; and, on one occasion that I understood he was indisposed, I sent him two bottles of my best Madeira and claret. Colonel Adam was therefore the last man in Alicant from whom I could expect ill treatment. It is true that, about the time of General Caamano's recall, I remarked a great alteration in him, and that, when I called upon him one evening in his own room, he, in a marked manner, turned the conversation to an inquiry into the nature of the trade of Alicant, its exports and imports, &c.—to which I merely replied, that my thoughts were turned at present to the quiet possession of my house, so as to be able to arrange my affairs, and to support those rights which the laws of the country conferred upon me;—from that time I discontinued my visits: but I attributed this conduct to the caution he thought himself obliged to use; and when the Governor was removed, I supposed he did not wish to appear connected with me. I could not, however, doubt that he continued to feel as before, and would be glad that the improper conduct of which he had disapproved was made evident.

When I arrived at Alicant, I claimed my

mother's house, not as a matter of favor, but of right. I first applied to the Count of Soto-Ameno, whose duty it was to get it for me; he sent an order to Mr. O'Shea to leave it, but he took no notice of it, and his brother-in-law wrote the following letter to the Count:

TRANSLATION.

Letter from Major-General Roche, to the Count of Soto-Ameno, First Constitutional Mayor of Alicant.

"Count, most esteemed friend; I have felt very much at the intelligence communicated to me from my house at Alicant: they wrote to me that I should relinquish immediately the house which I inhabit in the Plazuela de Ramiro, belonging to Madama Moore, that her son Mr. Moore may inhabit it.

"You are not ignorant of the great benefits which I have done to that city; and it appeared to me, that you ought to have taken that circumstance into consideration, and prevented any steps being taken in my absence; particularly as there exists, in my said house, papers and documents of the greatest importance, and very large sums of money.

"I confess to you, with the greatest frankness, that I persuaded myself, that, in my absence, as well those gentlemen who compose that Junta, as yourself, would be the first to represent and take care of all my rights, in a business of this nature, with the greatest interest, and not proceed with such levity,

and without first communicating your determination to me direct.

"I hope that these my reflexions will have effect with you; and that, in consequence, you will take steps to avoid any resolution contrary to my wishes.

"Command always, without any limits, this your most affectionate friend, who wishes to please you.

(Signed) "F. Roche."

Xisona, 7th of Oct. 1812.

To the Count of Soto-Ameno.

I then went to the governor, by the count's directions, who told me it should be demanded formally; upon which I went to a lawyer to draw up a memorial for me, and soon after presented the following one to the Governor:

TRANSLATION.

"Mr. T. Moore, inhabitant of this city, with the greatest respect represents, that on his arrival he found his house in the Plaza de Ramiro occupied by certain persons, who had got into it by their own authority; in consequence whereof he found himself without a home, and therefore he cannot abstain from claiming said house, and insisting that it should forthwith be disoccupied, because no individual is authorised to take the house of another without the consent of the proprietor thereof, according to the principle which has been again sanctioned by the wise constitution which has recently been sworn to by the Spa-

nish nation, in Tit. i. c. 1. art. 4.* and that in such positive terms, that it is binding on the king himself, as is apparent by the tenth restriction on the royal authority of the same constitution, Tit. iv. cap. 1. art. 172.† or to be billeted without the proper order, which could never be in any case to the prejudice of the proprietor himself. On these grounds, the persons who occupy said house, and who possess none of these qualifications, cannot be suffered to remain there, however they may state themselves to be dependents of Mr. Keating Roche, who being absent has no right to quarters, and in the event of wanting them for papers and money, would act more regularly by applying to the billeting committee, which would certainly procure him an adequate place for them, than by taking the liberty which the exponent has stated, and which he can never consent to approve of. The exponent does not refuse to render service to the cause of his country. He has given proofs of it; and in furtherance thereof, he has at this moment his mercantile house, and three large warehouses adjoining, in the Baranquet, as well as the ware-

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* Art. 4. The nation is bound to maintain and protect, by wise and just laws, the civil liberty, the property, and the other legitimate rights of all the individuals who compose it.

† Art. 172. The King cannot take the property of any individual or corporation, nor disturb him in the possession, use, or employment thereof; and, if upon any occasion it should be necessary for an object of acknowledged public benefit, to take the property of any individual, he may not do it without being indemnified at the same time, and receiving a suitable compensation, according to the just evaluation of respectable men.

house and cellars adjoining his aforesaid dwelling-house, which have been converted into temporary mills for grinding corn, occupied. He therefore conceives, that he has contributed sufficiently, and that he is doubly entitled to have the house that he claims left at his sole disposal.

" In consequence thereof, and to prevent the continuance of the inconvenience which he has suffered since his arrival in this city, he respectfully requests Y. L. to be pleased to order that said house be cleared without delay or excuse, in order that he may live in it, as is just, and he expects from the rectitude of Y. L.

(Signed) " THOMAS MOORE.

The Governor sent a written order to Mr. O'Shea to quit, but he came and told him he was only a servant of General Roche, and could not obey any body's orders but his.

General Roche came to Alicant, and the Governor, being anxious not to offend an " English officer," shewed him my memorial, and told him he was bound to comply with my demand. General Roche requested him to suspend doing so till he could present a reply, which he would do immediately; but he left Alicant again without doing so. Upon which the Governor sent one of the town adjutants to see that his order was executed; but he thought it necessary first to ascertain, through Colonel Adam, that the English General

would not quarrel with him for doing his duty. Notwithstanding this, the Count of Soto-Ameno, to take credit for the justice done to me, told me he had spoken to the Governor in my favour, and that the latter had had a violent altercation with the English General on my account. I answered, that I did not believe such a thing could be possible, but that I would ascertain it from the best authority. I accordingly called at head-quarters, and at the second or third visit saw General Mackenzie, to whom I stated what I had been told, saying, I did not believe an English General would protect an act of injustice; and gave him a succinct account of General Roche's behaviour at my mother's house.

General Mackenzie said that he had nothing to do with the matter, and that all he wanted of the Governor was some convenient place to put some wounded soldiers. Upon this occasion, Lieutenant Mackenzie, aid-de-camp to the General, told me, that it certainly appeared very hard that they (the General and his staff) should be in possession of all the principal apartments, to the exclusion of the lady of the house, a widow, and daughter of a grandee, but he added, "it seems it is the custom of the country;" which convinced

me that the customs of the country had been very much misrepresented.

When Mr. O'Shea was removing, information was brought to me that he was taking away all the wines from the cellar. Conceiving that they were those which General Roche had so improperly and illegally obtained from my mother's housekeeper, I went to the Governor's, to demand that the removal of these wines should be prevented. I found General Roche and an English officer (who I subsequently learned to be Colonel Adam) in the room. I immediately informed the Governor of the nature of my demand; upon which General Roche declared that he had purchased other wine, which was what he was removing, and that he had drank all that belonged to my mother. He then addressed me in English, repeating the same thing. I answered, that it appeared impossible that he could have drunk all the one and kept the other; but that if he would give his word of honour that it was so to the English officer then present, I would say no more upon the subject. Colonel Adam, without speaking, withdrew to a little distance, and by gestures declined being made a party in the business. General Roche refused to pledge his word of honour in English, but repeated his assertions

solemnly to the Governor in Spanish. Upon which I told the Governor I would trouble him no further upon the subject, as probably I might have difficulty in being able to prove the identity of the wines. I then went to take possession of my house just as Mr. O'Shea was leaving it. Before he did so, he came up to my room, and apologized for his conduct on a preceding day. I shook hands with him, and assured him I entertained no animosity towards him, as I had come to Alicant with a wish not to have any personal altercations, and merely desired to maintain my rights.

Mr. O'Shea had previously told me, that he knew that in England or Ireland nobody would dare to go into another person's house, but that in Spain there were neither laws nor rights, and that every body did what he pleased. Continuing to act upon this idea, notwithstanding his apology, he behaved in the most improper manner at my mercantile house, filling up the entrance with boxes and packages, though the whole of the floor, consisting of three or four rooms opposite the counting-house was ceded to him, and refusing to deliver his billet to Mr. Strange as an authority for coming thither. He did this probably to gloss over the conduct of his

brother-in-law, who, on his return to Alicant with the English expedition, went to my mother's house, at Plaza de Ramiro, in which Dr. Thomas Pages, who had a power of attorney from her, then lived, and threatened, if he did not leave it within two hours, to throw all his furniture into the street, adding, that he had my mother's authority for taking possession of it, and telling him for his comfort that his family were catholics since the time of Adam. He then broke open the door of a small dwelling, into which Dr. Pages had got the former stabling altered, and thus established himself and his followers in full possession of the whole of the house, except the top rooms, into which all the property and furniture that could be saved from his grasp had been crammed.

Complaints being made to him by my mother's housekeeper that the cellar door had been broken open, he proposed as a remedy to purchase the wines, to which, she not knowing how to protect them, consented. It was a small collection of different sorts of wines and liqueurs, from twenty to fifty years old, and he proposed to her, in the same manner, to buy my mother's china and furniture.

Exasperated at the continued insolence of these people, and finding that, although I

could not prove the identity of my mother's wines, I could the manner in which General Roche had got possession of a black velvet coat of my father's, and transformed it into cocked hats for himself, I presented a memorial to the Governor on the subject, which, with his decree, and the proceeding thereon, I got printed as follows:

TRANSLATION.

M. J. S.

Alicant, 19 Oct. 1812.

Let it be done as demanded in every respect.

Joaquin Caamano.

Mr. T. Moore, inhabitant of this city, most respectfully represents, that whilst the Major-general of the national armies, Mr. Philip Keating Roche, resided in his house, of the Plaza Ramiro, he procured, after several repeated calls, the delivery to himself, by Mrs. Micaela Perez, charged by the exponent's mother with the care of her furniture and valuables in the said house, of a coat of black velvet, which had appertained to his deceased father, (may he enjoy the presence of God,) Mr. George Moore, under the specious pretext of wishing to look at it; and that he never returned it, nor gave any account of what he had done with it, although called upon to do so by the said Micaela Perez in person, previously to his embarking for the expedition that was preparing in Majorca. In consequence thereof, exponent respectfully requests Y. I. to be pleased to order that he

should return the said coat without any delay or pretext whatever, or prove what he has done with it, as is just, and as exponent expects from the rectitude of Y. L.

(Signed) THOMAS MOORE.

Alicant, 14th October, 1812.

I testify, that at the requisition of Mr. T. Moore, and in order to notify the contents of the foregoing memorial, and of the marginal decree of the Military and Civil Governor of this city to Mr. Philip Roche, Major-general of the royal armies, I, the undersigned public notary, attached to the tribunal of war, repaired to the house belonging to the said Mr. T. Moore, situated in the Baranquet-street, where I was informed he had his quarters; and enquiring for said gentleman, I was informed that he was in the Huerta of this city, where he resided with the division under his orders, and that he only came occasionally to this city; and in order that it may so appear, I note it as an official act, which I sign in Alicant, the 19th October, 1812.

(Signed) BERNARDO ORTIMO.

General Roche and his friends only replied by giving out I was mad, till after General Caamano's recall, when he got me cited before the Lieutenant-governor, to whom he complained of my statements respecting him, and said my mother's housekeeper had sold the coat to his servant. I answered that I had stated nothing but truth; that what he said of the coat was not true; and that I was ready to an-

swer any complaint he could lodge against me; upon which the Lieutenant-governor told him, "Yes, Roche, that is the best way; put in a formal complaint in writing." I heard no more from him; but Mr. O'Shea kept the rooms I had given him locked up, though there only appeared there occasionally a Spaniard of the name of Iturburn, calling himself the General's secretary, to keep up the appearance of his requiring quarters at Alicant for an office.

These particulars, with many others, were of public notoriety, or communicated by me to Col. Adam, to whom I also stated all that had passed with Major Lang on the subject of quarters. I had besides called upon Col. Adam on the subject of Sanchez, in consequence of a written request from the Count of Soto-Ameno. We had then discussed the subject of billets. Col. Adam had said the French marched into a town, and took possession of quarters by divisions. I told him I supposed that was in an enemy's country. He then said, that if he had an order from a Spanish authority, he would enforce it at the point of the bayonet, as the responsibilty should attach to the authority which gave the order. I said in that case the order ought to be from a competent authority; and at any

rate, I thought it would be more advisable to insist upon that authority enforcing its own order; to which he did not appear to agree. When, therefore, he came to me at my mercantile house, after breaking into my private house to tell me he had done so, I considered he had been acting with reference to this conversation, and to bring the business of billeting to some satisfactory settlement, such as he knew had been in contemplation, which made me answer him in the way I did; and when he used threatening language respecting the Diario, I thought it was to try whether I would repeat what I had before said of the state of the press at Alicant—I had told him it was by law as free as in England; and I could not suppress my feelings at the state of it in Alicant, considering that it had been so for nearly two years. In the temporary capital of the kingdom of Valencia, in which an Englishman was a leading member of the government, and not only as the nominal representative of H. B. M., but as the effective agent of the embassy at Cadiz, had ample means at his disposal. The Inquisition, considered as extinguished at Cadiz, was in such activity, as to insult the body of a British merchant on the day of my arrival, by one of its Familiats —and though the Cortes had been constantly

sitting at Cadiz for above two years, and the new constitution established above seven months, both appeared as much unknown at Alicant as on the opposite coast of Africa.

Being well acquainted with the printer of the Diario, I engaged him on a promise of taking 100 copies daily to insert articles from the best Cadiz papers—but some influence soon exerted itself to prevent it; and after having composed a part of the political catechism of the constitution published at Cadiz, which he had promised to reprint, he broke up the frames, saying he was obliged to employ his types for the business of the Allies. The presses of the only other printer were employed for an edition of a large work on military tactics. I therefore resolved to purchase a printing-press with English types, which had belonged to the junta at Valencia, and was then in a warehouse of one of the merchants, not only on public grounds, but as a fair object of mercantile speculation. I could not suppose Colonel Adam disapproved of what I was doing, and therefore attributed the language he made use of to his desire of trying whether I was firm in my resolutions, in order, in that case, to co-operate on his side; and, by appearing to believe the

contrary reports of others, and acting thereupon, bring things quickly to an issue.

Under this impression I answered him in the way I did, and continued clearing the ground-floor, till nightfall, when I returned, as usual, to my private house. On my arrival, I found four soldiers with their muskets in the entrance of my house, who prevented the door of the house or of the garden from being shut. Mr. James Budd, who had remained there after my departure, informed me that Colonel Adam and Lieutenant Roquefeuille, with Captain D'Aguilar and others had broken open the doors, and that he went through the house making inquiries for me, and into my principal apartments and bed-room with Mr. King. On the principal floor there was only the drawing-room, with a fine view of the bay, inside of which there was a large alcove divided from it by large glass doors, and adjoining to that a small room in which I slept; the door to which was in the passage where the soldiers were stationed. They said they had orders not to permit the drawing-room door to be shut; but otherwise behaved civilly; and as I perceived they were left to remain all night, I ordered them some supper, and went to bed.

On the 17th, I sent Carlos Botareli to the

Lieutenant-governor, in order that he might acquaint him with what was passing in my house, and at the same time ask for a passport, as I had resolved to go to Monforte, a place about four leagues off, to ascertain personally whether it was true, as stated to me, that the Mr. Daniel, the commissary was purchasing and contracting for cheap and bad wines.—During that day, nothing took place at my house at Plaza Ramiro, except that the four English or Irish soldiers were replaced by four foreign soldiers.

On the morning of the 18th, being the second day after my house had been forced open, I was of opinion, that these soldiers were stationed there without the General's knowledge, and perhaps contrary to his orders. I was induced to form this conclusion from the following facts. On the evening of the 16th, the General appeared to be completely ignorant of Colonel Adam's proceedings—and he had expressed disapprobation at what he had witnessed: Colonel Adam had expressly told me, that his department had nothing to do with quarters; and yet he and Lieutenant Roquefeuille (of Colonel Adam's department) were the only persons whom I had seen on the subject of Mr. King's billet. Neither Mr. King, nor any person of

higher rank than a common soldier, had appeared in my house, although two days had elapsed since violent possession had been taken of it. No authority, either from the Spanish government or British army, had been communicated to me, to justify the occupation of my house by those soldiers. The Governor's order and Major Lang's note were decisive evidence that I had contributed, at least my proportion to the burthen of quartering the troops.

I therefore determined to communicate the fact to the General. My object was to inform the General what had been done in the rear of my house, whilst he was reproving the soldiers in front, in order to find out whether the act itself had his sanction; for I could not conceive how, upon Colonel Adam's own statement, the Adjutant-general could have any thing to do in the business, except in the execution of an order from the General, as he certainly was not acting in virtue *of orders from* the Quarter-master-general. I was, however, at a loss how to make a direct communication to the General: I did not believe that my former letters had been delivered to him, though I had done every thing in my power to have them given into his own hands. My Spanish clerks were

intimidated, and I could place no reliance upon them; and even Mr. James Budd objected to carry any letters, on account of the reception he had met with from Captain D'Aguilar, the military secretary.

Whilst I was reflecting what to do, Carlos Botareli, who was almost the only person I could now rely upon to do what I desired, came to the counting-house. Upon his coming in I recollected the advertisement I had seen in the Diario, of the 6th December, respecting deserters, and I thought it would not be a bad piece of irony to suppose the soldiers in my house to be deserters, they shewing no authority for remaining there, and by that means to ascertain whether they were there with the General's knowledge;—and I conceived that a letter, so worded, would be submitted to him on account of its appearing liable to animadversion, I accordingly wrote the following one in Spanish, in the name of my house, which Carlos Botareli took to headquarters:

TRANSLATION.

Al Sor. Dn. Frederico Adam, Dto. Ayte. Gen. Cuartel General.

"SIR, *Alicant, 18th Dec.* 1812.

"Having seen in the Diario of the 6th of this month, the following advertisement—'Any per-

son who arrests and conducts to the English head-quarters deserters from the British army will receive a gratification of twelve hard dollars for each. Head-quarters of Alicant. December 4, 1812. (Signed) FREDERICO ADAM, Dto. Ayte.-Gen.' We take the liberty of informing you that there are four individuals in a house of the Plaza de Ramiro, which was inhabited by General Roche, and subsequently by Captain Pearson, of the regiment No. 81, wounded in the expedition to Denia, who might perhaps answer that description; but as, in addition to their number, they are armed, it would not probably be so easy for peaceable citizens to conduct them to head-quarters, and for this reason we have sent the bearer of this letter, whom we have informed of the means of apprehending them; for, without this precaution, although the pile of buildings between the two English powder magazines, including church and all, was surrounded, they might get away by channels unknown to,

"Sir, your most obedient servant,

"MOORE and Co."

"*Baranquet-street.*"

My messenger upon his return informed me that instead of being received at head-quarters, he was there directed to take my letter to the Adjutant-general's, where it was taken from him by Col. Adam, as being the person to whom it was addressed, contrary to my belief.

I did not think that the person to whom it was directed and whose name and address I took from the Diario, was the Col. Adam with whom I was acquainted, but a brother of his, (having heard he had one there,) employed as under-adjutant at head-quarters, for I always considered Col. Adam adjutant-general of the army.

I hoped by this means to bring about some explanation, or to come into contact with somebody who would or could interfere to set matters right. At twelve o'clock I went to my private house, according to custom, and just before dinner Mr. J. Budd, having left the house upon some business, returned through an adjoining warehouse filled with large casks; but upon his rapping and the door being opened by the masons who were there at work, Col. Adam, accompanied by Lieut. Roquefeuille, another officer, Serjeant Power, and Mr. King, chaplain to the forces, pushed in after him, and following him through the casks and dark passages, got into the body of the house to the bottom of the stair-case, which they immediately ascended; the four first entered the small room in which I was, whilst Mr. King remained on the landing-place. Upon my inquiring what business they had in my room, Col. Adam took

a letter from under the flap of his coat, and in an authoritative tone asked whether I had not written it. I answered that it was not intended for him, and that at any rate he knew that was not the place to enquire about it, but at the counting-house, as it was not signed in my name; but that I would not deny that it was my hand-writing, and that I could explain it if called upon in a proper manner. Col. Adam, looking at Roquefeuille, and evidently wishing to avoid any explanation, put it coolly back under the flap of his coat, saying it was a *mauvaise plaisanterie*, and went further into the room, and getting between me and the window which opened upon the square, turned to Lieut. Roquefeuille and the other officer, saying, "I will shew you that I am not afraid of the responsibility attaching to me," and forthwith ordered the serjeant to lay on, or words to that effect, which he accordingly did, by striking three or four blows with a thick stick which he held with both his hands, down upon my head, whilst I warded off the blows with my hands. Col. Adam, after desiring the serjeant to desist, told me: "I understand you are mad, or pretend to be so." To which I answered, taking hold of his arm: "I hope you may be always as much

in your senses." Mr. King soon after came into the room, brought in I believe by Lieut. Roquefeuille; upon which Col. Adam presenting him said to me: "Do you know the character of this gentleman?" meaning as I supposed whether I knew that he was a clergyman. I answered: "Perfectly; and Mr. King knows that I told him my refusing to lodge him had nothing of a personal nature, that I was willing to respect him as a gentleman, a clergyman, and as an Englishman; but that I had told him upon this occasion I was merely standing up for my rights, for that I had mentioned to him that I would be anxious to accommodate him if he brought me a letter of recommendation from any body I knew, or even from the admiral in the bay." At this Col. Adam interrupted me, and taking a little printed paper like the one formerly presented by Mr. King from under the flap of his coat, said he would take the quarters in my house, Mr. King not being a military man and able to keep them. I answered him that the same force that could keep him there could keep Mr. King, for it was only by force he had got into the house; and that if I had more force he should not, as the bit of paper he held in his hand was good for nothing, and no better than a piece of brown.

paper, as I had told Mr. King and Lieut. Roquefeuille before. I then added, you see it has not any signature to it. Mr. King then said; I had not stated to him that his had no signature when he presented it. I told him, if I did not say so he knew I looked at it and read it before I told him it was good for nothing; to which he assented. I then added, addressing myself to Lieut. Roquefeuille: "How can such a piece of paper be a legal billet, without any name, or without your being even able to tell me the name of the person from whom you got it to whom I could address myself about it." And I asked how Col. Adam got his, and whether Mr. King had still his also; which Col. Adam acknowledged he had, but prevented its being produced: and when Lieut. Roquefeuille proposed shewing me a tall thin man at the town-house, who gave him the billet, Col. Adam interfered, saying it was not necessary, that it was enough it was a person who had more confidence in English officers than I appeared to have; at which I only smiled (knowing he meant the clerk).

Col. Adam also asked whether I had not offered a reward in the Diario respecting the person who insulted the principal parish priest carrying the sacrament. I answered,

that I had, and that I could not believe it was an Englishman, which was explicitly stated in the advertisement. To this Lieut. Roquefeuille said: "Oh! we understand that." And as, upon my saying that I was resolved to quarter nobody in *that* house except by force, according to my orders from London, where I expected to obtain redress for the treatment I had met at Alicant, Col. Adam made a significant gesture to Lieut. Roquefeuille, I said: "My orders from London are my mother's directions."

The other officer, who appeared quite pale and affrighted when the assault was committing, only once opened his mouth to observe that something I said was an Old Bailey answer. Upon which I told him: "You will find that I do not deal in Old Bailey answers, and all I shall expect from *you* will be to tell the truth when called upon to do so in England."

They then went up stairs, where the four soldiers were stationed to keep possession of my drawing-room and adjoining bed-room; but as the smaller room in which I slept was locked, Col. Adam sent the sergeant to demand the key of it. The sergeant told me it was to look at it. Upon which I called Mr. James Budd and gave him the key, desiring

him not to deliver it unless obliged so to do; but before he could go up stairs, Col. Adam and the rest returned into my room, and asked for the key of the one up stairs; to which I answered that I had not got it, and that the sergeant said they only wanted to look at it. Upon which Col. Adam said to the sergeant: "That is not the thing." He then inquired if that was the room I slept in; and upon my answering in the affirmative he told me if I did not give that room he would take the one I was in; though he particularly stated he did not want a bed, as he would bring his own bed. I said that would be worse still, and that Mr. Budd had the key in his hand; adding, I would give him nothing, but as he had taken the rest by force he might that. Upon which he said: "Well then!" and snapped it out of his hand.

As soon as I was left alone, I began to reflect on what had passed. I did not believe that any human being ever could degrade me, because I always thought I could only be dishonoured by my own actions; but I endeavoured to account to myself for the conduct of Colonel Adam in a manner, which, if extravagant, was at least suggested by the reluctance I felt in my mind to class him among the basest of mankind. I confess I still

thought it possible that Col. Adam, having resolved upon acting with caution, instead of co-operating manfully and openly in what he thought right, might have been instigated to act in this manner, contrary to his better judgment, by the false accusations of others, who might have represented a letter in Spanish as containing any thing but what it really did. I was induced to give way to this idea by the manner in which he conducted himself. So far from betraying the remotest symptom of passion, either upon this occasion or when he came to my mercantile house on the evening of the 16th, I could perceive nothing but the appearance of deliberation and thought. If he spoke in a high tone, it was more of a consequential than of an angry nature. After the assault, every thing he uttered bore the appearance of deep meditation; with folded arms, he often reflected before he spoke or did any thing; so that when he proposed taking up his quarters in my house, I thought it possible that, after obtaining reparation for the outrage committed on myself, I might through him arrive at a general eclaircissement of all that was passing at Alicant, which must have led to the restoration of General Caamano, and to the triumph of the friends of liberty. I therefore spoke with the cool-

ness of a man who expects to obtain ample redress and satisfaction through the very means that were employed to crush him, if possible; but I resolved, at the same time, to act for myself in the best manner circumstances would allow. I had at first some idea of stopping up immediately the communication between the floor Colonel Adam had seized upon and the one in which I was; the nature of my house making such a measure practicable, as the entrance to one floor would remain open through the garden, whilst I might use the other to the square on the ground-floor; but whilst I was thinking what to do, a person came in who informed me, that it was publicly stated that I had been violently beaten by the English. Upon hearing this, convinced that all my ideas respecting Col. Adam had been erroneous, I resolved to glue upon the street-door the billet Colonel Adam had presented as his authority for quartering himself on my house, with the words, *Alojado a viva fuerza*, or, quartered by open violence, written upon it, and signed with my name.

In consequence, I sent for a carpenter, and had it glued on by him; I then wrote an advertisement, which I sent for insertion in the Diario, requesting, "that any inhabitant of

" Alicant who knew whose flourish was af-
" fixed to a little printed paper then glued
" on the door of my house, along-side the
" fountains adjoining the parish church of
" St. Marc, in the villa Vieja, and which was
" deemed sufficient authority by a party of
" English military, acting in the name of Spa-
" nish authorities, to entitle them to force
" open, on the afternoon of the 16th, between
" two and three o'clock, the outward and
" inward doors of my house, and take posses-
" sion of my principal apartments, would be
" so good as to communicate it through the
" channel of the said Diario."

I sent this advertisement to the Diario, to put upon record the exact time at which my house had been broken open; and, although I considered the conduct of those who had done so highly improper and impolitic, I guardedly avoided throwing excessive blame on them; or, more properly speaking, I attempted to excuse their conduct, and more than in strict truth it deserved: the billet delivered by Colonel Adam being dated the 18th, shewed that he had thus violently quartered himself upon me in virtue of an imaginary authority, obtained two days after he had forced the doors of my house. I believed that the English General would, by the means

of the Diario, be at length informed of what had passed on the 16th, when he had reproved the soldiers. I had seen the Diario at head-quarters when I called upon General Mackenzie, and I concluded that he would soon see or hear of the billet thus glued on the door of my house, which must, in my opinion, lead to some investigation, which would afford me an opportunity of stating to him the treatment I had received. These appeared to me the only means left me of making my case known: for the Spanish authorities neither would nor could interfere with any English officer, and much less with one in the situation of Colonel Adam.

It was evident, that until I could obtain satisfaction for the past, and protection for the future, I could neither carry on my mercantile business at Alicant, nor remain there with personal safety. I had made myself obnoxious to a great many individuals by my endeavours to bring to light their nefarious practices in sowing dissensions, and throwing the odium of arbitrary proceedings on the English; they had not only reason to be irritated at my past conduct in endeavouring to expose the prevalent system of corruption by which they throve, but they had still more reason to be alarmed at the probable consc-

quences of my having the command of a press to propagate disagreeable truths. I had in consequence been assailed by all sorts of provocations, anonymous letters, and paragraphs in the Diario, representing me as mad, making use of the name of the English commissary, or signed by the secretary of General Roche, whose brother-in-law accompanied by others, had, at different times and places, attempted to intimidate me by threats of personal injury. I had hitherto despised these threats, not thinking they would dare to put them in execution; but I considered the conduct of Colonel Adam, when he came to my mercantile house on the evening of the 16th December, likely to operate on them as a direct instigation to personal revenge for the exposure of their conduct in the Diario, and his subsequent conduct in coming to my house with various military men and the chaplain of the forces, whilst that house had a guard of four soldiers stationed in the centre of it, and the false colouring given to the assault was particularly calculated to render me odious, not only to the English, to whom my conduct was thus shamefully misrepresented, but to the motley crew of Italians, Germans, Poles, &c., who, with Spaniards of all descriptions, composed

the allied army; some of whom might be persuaded to think it meritorious to assassinate me, under the pretext of being a French partizan, in a province in whose capital, Valencia, the resident French merchants, amounting to about 150, had been murdered in cold blood, as the assassins, or their instigators, might reasonably be supposed to have sought refuge at Alicant, it being at that period the only place of safety for them; and the more particularly as I had previously offered a reward in the Diario to any one who would bring them to justice.

At the exact period of the assault I was engaged in business of various kinds, which required the whole of my time and attention. I had landed a cargo of fish belonging to Messrs. James Hunter and Co. of Greenock, into my warehouse, because I was convinced the low price offered for it was solely to be ascribed to the very extraordinary method of proceeding of the English commissariat, which I thought it impossible could be continued: and so convinced was I of the improbability of the French besieging Alicant, that I wrote to the owners of the cargo—"We are willing to take this step on our responsibility—guaranteeing you from any risk of the enemy."

On the 1st or 2d of December, a Mr. Chiva,

calling himself the minister of finance at Alicant, wrote to me in the most pathetic terms, stating that the military hospital was without funds, and that the patients would remain without their allowances the next day. I sent him what he stated was wanting for that purpose, and subsequently agreed to continue supplying it in advance for the rest of the month; by which time I had flattered myself that steps would have been taken at Cadiz, to put things on a proper footing at Alicant, at the personal instance of General Caamano; for I had no idea that his removal had been effected by supposed English influence, till he delivered to me in Cadiz, in May, 1813, the original letters of the different English generals commanding at Alicant, to him with copies of his answers, and told me that his recall had been handed to him by Admiral Hallowell.

Mr. Chiva had, in consequence of my agreement, to supply the hospital, given up to me the warehouse adjoining my mother's house, in which two temporary mills had been established; and thus I had succeeded in one of my objects on coming to Alicant, which was to get her property restored. It was through this warehouse, to which I had brought all the large casks from the wine

cellar at my mercantile house, that Colonel Adam and his party got into my room on the 18th; though the street door was perfectly free for him to come in at, being kept open by the four soldiers on guard.

I had contracted to supply Mr. Daniel, the commissary, with 20,000 cantaras of wine, for the supply of the British troops, at a very low price; and, although it appeared to me that he acted in a manner that would fully justify me in not delivering him any, I was resolved to fulfil my engagement as far as he left it possible for me to do so. I had, therefore, desired Mr. Strange, my former partner, who had retired, at my request to the country in the beginning of November, to employ himself in a purchase of a part of it;—and he had just commenced to do so. I had purchased 144 pipes of wine in the bay, to be transhipped on board Messrs. Hunter's vessel; and some difficulty had been raised on the subject at the custom-house, which my presence was necessary to settle. I had just purchased at a public sale at the town house, the materials of an extensive temporary building for horses, in the square near my mercantile residence, where Mr. Commissary's carts and mules used to stand.—I had done so with an intention of insisting on the repair

of the building, as the measure of destroying it after the money it had cost, at a time when more cavalry was expected, was apparently calculated to cause greater discontents at Alicant—the annoyance from horses being greater than from men.

I had also on the 15th or 16th taken the contract for supplying the Spanish troops with bread, the Spanish commissary first supplying the grain out of which it was to be made—not for the sake of profit, but to secure justice being done in this respect to the soldiers: but I fancy that my doing so did not please one commissariat, more than my wine contract appeared to have pleased another.

In the midst, however, of an active correspondence on these subjects, I was assailed in the manner described; and after arranging matters in the best manner I could, on the night of the 18th, which I passed on a mattress in a room inside my counting-house. I left Alicant on the morning of the 19th with Mr. James Budd and Carlos Botareli, leaving my French servant behind me at my mercantile house. Before my departure I addressed a letter to Mr. Daniel, putting a thousand cantaras of wine at his disposal.

On arriving near the convent of Orito, on

the way to Monforte, Carlos Botareli shewed me a letter of recommendation which the head of the convent, then at Alicant, had given for me, directed to the president of it; upon seeing which I resolved to go thither.

It was a large isolated convent, with an hospicio, or species of inn for travellers, supplied from the convent annexed to it. But as the president, on my arrival, offered me the provincial's cell in the body of the convent itself, I accepted of it, considering it not only a safe asylum, but as a place in which I should be free from any unwelcome intrusion, as nobody could enter without the permission of the head of the house. Here I determined to stay till I could obtain satisfaction for the past and security for the future at Alicant, and endeavour to carry on my business by proxy; for which purpose I wrote to Mr. Strange on the 20th December, requesting him to repair to Alicant, and I sent him my power of attorney, it being understood that he was to follow my orders.

I was confident that the steps I had taken, and the publicity of my having been obliged to leave Alicant, would have brought on an immediate investigation into the nature of the transactions at my private house, of which I still believed the General to be ignorant: but

learning that Colonel Adam had gone with the sergeant to sleep at my house, and put his name on the door next to the billet which had been glued on, stating it to be his quarters as Adjutant-general, though he kept his former quarters; and that all manner of injurious reports were circulating at Alicant with regard to me, I sent an advertisement to the Diario, on the 24th of December, to the following effect:

"That having retired to the Convent of Orito, near Monforte, not chusing to continue exposed in my own house to personal insults, whilst there existed no authority that could or would restrain them, nor a free press to appeal to at Alicant; the public was thereby informed that all just demands upon my house would be paid on the evening of the day subsequent to the one on which they were made, Sundays excepted."

This advertisement Mr. Strange refused to put his name to according to my directions; alleging that it would commit him with the English and Spanish authorities.

It was necessary to give a public notice of the cause of my quitting Alicant and of the place of my retreat, as although I had left it with a regular passport from the Lieutenant-governor, arbitrary proceedings were commenced against my property on the very day

of my departure, under the plea of my non-appearance to summonses which were never delivered.

The reason for desiring Mr. Strange to sign the advertisement, was for fear the printer at the instigation of others might refuse to print it unless some person resident in Alicant would put his name to it, in order to cover his responsibility as printer, in conformity to the law establishing the liberty of the press. But Mr. Strange's name was not to appear in the Diario.

This advertisement was not inserted till the 29th. During the delay occasioned by Mr. Strange's refusal in the insertion of it, I received a letter from Mr. Athy, giving me an account of the reports in circulation with respect to me, viz. that I was out of my senses, &c. &c.; and at the same time complaining that I had diminished his profits by taking the regular bills of the officers of the navy on the government offices at the same exchange as the Commissary-general of the army negotiated his drafts on the treasury. I inclosed this letter to Col. Adam, expecting that he would immediately take steps to undo the injury he had done me. I also addressed a few lines to himself; in which I appealed to his feelings as a man to have a

communication made to my mother of the truth, as I stated she was very old and infirm, and might fall a victim to false reports. I also intimated to him that Sir James Mackintosh, with whom he had professed himself acquainted, was a gentleman through whom such information might be afforded to my mother. I made this request in consequence of my letters having been intercepted and kept back, irregularly transmitted, or delayed for an unreasonable time.

On the 28th of December, as I was walking outside the convent on the road, I was accosted by a soldier on horseback with a letter, addressed from Mr. Chiva, the minister of finance, to Moore and Co., upon the subject of the military hospital not being regularly supplied in consequence of my absence, which I refused to take, telling him to deliver it at the counting-house; upon which the soldier, by the orders, as he subsequently said, of a little man who was standing at a distance and making signs to him, drew his sabre and insisted upon my receiving it; which I absolutely refused to do, being in presence of several of the friars, and within a few yards of the convent, into which I immediately retired.

This occurrence, as well as the informa-

tion received from my house at Alicant, stating among other violent proceedings going on there, that a great part of the cargo of fish which I had landed for account of Messrs. James Hunter and Co. of Greenock, had been embargoed and seized upon, convinced me that I could not carry on my business in this manner; for not only my clerks and the persons employed in my warehouses, &c. were intimidated from following my orders; but the German house with whom I had deposited my cash, making them my bankers, had been obliged to pay a check of mine in payment of a bill drawn by General Whittingham on Sir Henry Wellesley, to a different person from the one to whom alone it was made payable, notwithstanding their opposition, without any further preliminary than an inquiry whether they possessed the amount thereof in cash belonging to me, and they were afraid of being again similarly circumstanced, unless I immediately retired my cash out of their possession.

I moreover received a letter from Mr. P. Strange, expressive of his desire to retire from Spain, and it was now evident that Colonel Adam would not come forward as a gentleman to make me any reparation in his power, as my letter to him which had been

duly delivered by Mr. James Budd at his quarters to Serjeant Power remains unanswered. I therefore sent an advertisement to the Diario, stating that the house of Moore and Co. would suspend its business on the last day of the year. After this, the English commissary seized upon various parcels of wine belonging to me, by the Spanish Lieutenant-governor's order, although the Lieutenant-governor told the commissary that he had no authority for granting such an order; and for this wine the commissary has not paid to this day. The several persons who had made sales of wine to my house, alarmed at this conduct of the commissary, and following his example, laid hands upon my property; for which they have not paid. And it is therefore apparent that to Colonel Adam's violent outrage is to be attributed the loss of my mercantile establishment.

On the 14th of January, 1814, I resolved to dispatch a courier to Cadiz, partly to insure the safe transmission of some letters, bills, and accounts; and partly to call the attention of the Cortes and of Lord Wellington, who had recently arrived at Cadiz, to the situation of Alicant. I also determined to dispatch Captain Banner, of the English merchant ship Hope, which I had delayed

doing in the hopes that some investigation would take place by orders of the Commander-in-chief, and that I would have an opportunity of bringing him forward as a witness of what had occurred at head-quarters when I attempted to see General Clinton, or to have a letter delivered to him. Finding it necessary for that purpose, and to get the Lieutenant-governor's permission and order for post-horses, to go to Alicant for one night, I saw on my arrival at my counting-house a body of sick soldiers in the English service lodged in a damp warehouse on one side of it, whilst I knew that the loft of my principal warehouse on the other side continued occupied by a Spanish agent under the pretence that a few packages of clothing for Roche's division, chiefly consisting of belts remained there. Understanding at the same time that a new general had taken the command of the English army, I thought it might be practicable to open a direct communication with him so as to have justice done myself.

Previously to dispatching the courier, I resolved to make another indirect attempt to bring Col. Adam to a proper feeling by requesting Mr. Budd to call upon him and shew him the following offer, inquiring to whom it should be addressed :

"SIR,

"Observing that a body of sick soldiers, apparently serving under your command in the cause of Spanish liberty and independence, are lodged in a warehouse belonging to me and rented by the Spanish government, which I consider better adapted for horses in good health, I take the liberty of offering you an extensive, airy, upper, floor, of another warehouse, on the sole condition that care shall be taken not to soil or injure the building, and that it shall be restored to me in the same condition as I deliver it when your soldiers leave it, or at the expiration of six months if required by me.

"I have only to add, that having heard General Mackensie express on my arrival at Alicant that he was in want of a proper situation to place some wounded or sick men in, I intended to have made him this offer through the then Governor, and expressed nearly as much *in writing* at the time to Major Lang, deputy quarter-master-general, about ten weeks ago.

"I have the honour to be,

"Sir, your most obedient, humble servant,

(Signed) "THOS. MOORE."

"*Alicant, Jan.* 14, 1814.

"*Baranquet-street.*"

But Colonel Adam merely told Mr. Budd that M. G. Campbell was the new commander, to whom the offer was to be addressed, and that the head-quarters were changed to another part of the town; adding,

that he had received my letter from Orito, which he termed an odd letter.

I received the following note in answer to my offer:

"Major-general Campbell returns his compliments and thanks to Mr. Moore, for the obliging letter he favored him with yesterday afternoon. He will put the same into the hands of the army-inspector of hospitals, and little doubts he will readily avail himself of Mr. Moore's liberal and considerate offer.

"*Alicant, Jan.* 15, 1813."

Those to whom my offer was referred seemed disposed to disgust me with having made it; for after receiving several vexatious messages on the subject from Alicant, I found myself obliged, in order to put an end to the difficulties raised, to direct Mr. P. Strange to give up the whole of the warehouse, which was in consequence used as a military hospital by the English army, kept by somebody belonging to it, and never restored to me or to my house, and is now advertised for sale to satisfy the custom-house officers for their supposed right of confiscation of the 144 pipes of wine mentioned.

On the 8th of February, I resolved to write to the Rev. Mr. King, thinking that a

person in his situation, chaplain to the forces, and who had ostensibly been the cause of the first proceedings against me, would be warm and zealous in his endeavours to set matters right; I therefore addressed to him the following letter:

Convent del Orito, 8th Feb. 1813.

"Sir,

"In order to prove to you that I was desirous to contribute my share to the procuring quarters for the British at Alicant, I beg leave to trouble you with the copy of an offer I presented in October. Perhaps Lord Frederick Bentinck and Messrs. Lang, Paddy, and Aguilar, can account for no arrangement having then taken place. I proposed the change in Lord Frederick's lodgings, because, on going to leave a card there, I considered that they could not be much to his satisfaction. A person dressed like a Dominican friar and a big Irishman, who stated himself to be his servant, seemed to take charge jointly of my card, and wished me to go up stairs, which I declined, as they said Lord F. was not at home.—I send you also a copy of a letter to Mr. Athy, by way of answer to the very surprising accusation of one of the persons in your company, when I had last the pleasure of seeing you, that I had offered a reward for the discovery of the person who had insulted a friend of mine in so atrocious a manner. I also inclose a copy of a note from Major Lang, with one of another from Captain Pearson; the latter subsequently wrote me a very impertinent one, which I

showed to Colonel Adam; but on going to his lodgings, he explained it away: and I, not thinking it possible that British officers could act as I have found them to do since, received him into my house—the other inclosures will shew you some part of *his* conduct.

"I should have thought it entitled to some notice, or some apology, on the part of his superiors; but I am in some doubt whether my letters reached General Clinton, from the very extraordinary occurrences that took place at the delivery of others; but at length I got an acknowledgment (from Lieutenant Floyd I believe) that my house's letter of the 26th would be delivered to him.

"I have the honor to be,
"With very sincere respect,
"SIR,
"Your most obedient humble servant,
(Signed) "THOMAS MOORE."

Rev. Mr. King, Alicant.

I directed my letter to the Rev. Mr. King, at Colonel Lacy's, on the supposition that he was living there; Colonel Adam having told him in my presence, and in that of the officers and serjeant he had brought with him, that he would give him his bed-room at the Adjutant-general's office, and take for himself the rooms at my private house. On the 16th I received the following answer:

Alicant, Feb. 9, 1813.

"SIR,

"I have read the correspondence with which you have been pleased to favour me; and as far as I am able to judge, I must think there exists some palpable error in that part of it which alludes to your exemption from admitting British officers into your house, when holding in their hands a mandate to that purpose, sanctioned by the constituted authority of the Junta. I am at a loss to discover any rational or equitable cause, why an Englishman should be thus favoured with a preference so highly invidious and politically wrong: a thousand reasons crowd upon my mind to justify this assertion; and I am persuaded, if you would only consider it *impartially*, you would instantly allow its impropriety, and acknowledge *conviction*. The other part of the correspondence, which refers to the conduct of an officer, is highly shameful and reprehensible; and I should have felt, as you must have done, the same indignant spirit at so gross an accusation. I am sorry you should have experienced ungenerous treatment in return for much apparent civility. I am not competent to judge of the charge which closes the correspondence—if the statement be correct, it is a pity your character should for a moment suffer under an imputation so *unequivocally* injurious, harsh, and oppressive. I shall be very happy to meet you upon terms of friendly conciliation. I am by no means disposed to think unkindly of you from what may have characterized previous circumstances; and could I succeed in gaining you to express a similar feeling,

there would then be no impediment to our mutually forgiving each other, and forgetting all that is past.

"I am, with much respect,

"SIR,

"Your's faithfully,

"T. W. KING,

"Chaplain to the Forces."

"I am lodged at Mr. Wallace's."

Thomas Moore, Esq.

This letter seemed purposely to avoid alluding to Colonel Adam's conduct, or appearing to know any thing of the assault, but it informed me that he was lodged elsewhere, and that, therefore, the whole of the proceedings directed against me by Colonel Adam had only tended to procure himself possession of my private house, to accommodate himself and the Admiral occasionally, in addition to the quarters in which he had previously been three months, and which he also retained. Mr. King appeared to me in other respects, from the style of his letter, which incorrectly supposed I claimed exemption from billeting as an Englishman, so little likely to interfere in my behalf, that I contented myself with making him the following reply:

Convént del Orito, 16th Feb. 1813.

"SIR,

"I am only *this instant* favoured with your letter dated the 9th instant. My only reason for

writing to you as I did was, because I considered that *with you* I had nothing to forget or forgive: with respect to others, I have only to say, *Justitia insequitur claudo pede*,* and *let them look to it*.

"I have the honour to be, very respectfully,

"SIR,

"Your most obedient humble servant,

(Signed) "THOMAS MOORE."

Rev. Mr. King, &c. &c.

I was also about this time informed from Alicant, that Colonel Adam had re-opened the entrance from the square into my private house, which I had got closed, although, in order to prevent his doing so, my mason had repaired the entrance through the garden, and that he had filled up the new cellar I was making with loose stones and sand, leaving the whole of the lower part of my house, which communicated with the adjoining warehouse, filled with wine casks, completely exposed. As these circumstances must have been public and notorious, I began to think that Colonel Adam had reason to consider

* I at this time expected to have, at some future period, the assistance of Mr. Murray, purser of the Malta, who was represented by me by Mr. Athy as a man of immense literature, and buried in books, from which I drew the conclusion that he must be a friend of justice.

himself above any responsibility, and therefore to despair of any redress at Alicant.

On the 17th March, finding that all hopes of redress were vanishing, I determined to go to Alicant, (the army having then removed from thence, under the command of Sir J. Murray, who was stated to have lately arrived from England, and to have established a stricter discipline, issuing special orders on the subject of quarters,) and personally to call on Colonel Adam for an explanation of his conduct before I departed for England, as I had already got a passport to go to Lisbon by land. But I found on my arrival at my house, that Col. Adam was no longer there, but that the serjeant who had beaten me was in possession of my apartments. He told me Col. Adam was somewhere on the coast; but it struck me at the moment that he was dead, and that therefore I could never hope to have what had passed satisfactorily explained. I then went to sleep at the house of my mother's housekeeper; and there, under the influence of certain delusions, at the moment thinking all redress hopeless, cut my throat.

Upon this event taking place, as I had been isolated from all protection as a British subject, by the conduct of Colonel Adam, the Alcalde thought himself justified, under the

the same time politely requested that I would accommodate him with a room, which I very willingly did, saying, however, the billet was good for nothing. I then desired the friars to withdraw, and make way for him, which they no longer hesitated to do, saying they had hitherto been obliged to remain there by orders of the Alcalde.

On being informed on the 18th or 19th of April, by Lieutenant A. Judge, who was then the acting Quarter-master-general at Alicant, that Col. Adam was severely wounded at Castalla, and bringing into town in a blanket and that he was not able to procure a quarter for him, the man at the Town-house only offering him billets in blank to fill up himself, I made an offer to give Col. Adam, on certain conditions, a lodging through the medium of Admiral Hallowell, as his particular friend, on the supposition that Col. Adam would at length make every possible atonement, by doing every thing in his power to co-operate with me in any manner that I might think likely to undo the bad effects of his conduct; but instead of making any atonement, he only added a new insult, by sending his servants (Frenchmen and Italians, although I had stipulated that only an English servant should attend upon him,) and luggage to my

house, whilst he himself rode to the Mole, and went on board the Malta.

Upon my expressing my surprise at his being so well to Lieutenant Judge, as he had informed me that Colonel Adam was so severely wounded, as to be conveying on a blanket, he answered that Colonel Adam told him he had been conveyed so as far as Axona; "but, d—n the Alcalde there," he would give him no men to convey him further, and so he mounted his horse, rode into town, and proceeded immediately on board the Admiral.

I made a last attempt to bring Colonel Adam to a due sense of his conduct when on board the Malta, by writing the following letter to Admiral Hallowell on the 20th April.

"Sir,

"Although Col. Adam has injured me more than any person on earth, by obliging me to throw up an establishment of fifty years standing, which I had looked to as the chief resource for an independence, not only for myself, but for the family of a friend to whom I have been attached through life, and to whom I hope to be soon united; besides being the source of personal anguish and torments that are inexplicable, as I have never been able to bring myself to think that he acted in the way he did, except at the instigation of some one who

wished to thwart the good understanding between the English and Spanish nations at Alicant, which I was so much astonished at not finding to subsist on my arrival, and which, as it appears to turn out, I had the folly to think I should have in a great measure contributed to establish, having seen every disposition thereto on the part of the late governor and others; and considering the chief obstacle to arise from false interpretations and erroneous reports, which the difference of languages gave scope for, I resolved to shew I felt no personal enmity towards him. When, therefore, Mr. Judge told me yesterday morning that he was bringing into town wounded, and the difficulty of obtaining a good quarter for him, I determined to offer you, as his friend, to accommodate him, if I could do so without exposing myself to any further trouble whilst I remained here, or to the censure of my mother for what might be the consequence of my leaving her house in part occupied; this made me anxious to have a previous explanation, as I stated to you my objection would be to having servants in the house. Mr. Judge having subsequently told me it was an English servant who attended him, I said if he chose to come alone with an English servant, I should be perfectly satisfied. Judge, therefore, of my surprise when I was told a covered cart was at the door with luggage, and that his servants said he was gone on board for fifteen days perhaps, and that they were ordered to the house he occupied before, meaning this one. In short, not to be over troublesome to you, I meant merely to oblige Colonel Adam personally; but I cannot think of making this house a

quarter for his servants, three of whom I understand came to sup here last night, one of whom remains with Mr. Judge's servant. I was just beginning to enjoy a little repose, and the comforts of a home, for the first time since I came here. My door was locked before nine at night, and we have lived without a moment's uneasiness, on account of servants, since Mr. Judge came into the house, which could not be the case in future with those who came into it, and remained in it, under different impressions; I therefore trust that Colonel Adam will direct proper quarters to be looked out for him, as there will be time for doing so, whilst he remains in the bay.

"I have the honour to be

"Most respectfully,

"SIR,

"Your most obedient humble servant,

(Signed) "THOMAS MOORE."

Alicant, 20th April, 1813.

"I am glad to find Colonel Adam is so much better than I supposed, from hearing he was bringing into town carried by men.

"I should be thankful for a passage as far as Gibraltar or Cadiz by the Buzzard, or any man of war; but if it cannot be, I will go in a transport, as you were so good as to promise to procure for me room in one."

But neither the Admiral nor his friend took further notice of this letter, than by the former

ordering his purser to offer me a passage in a transport bound for Gibraltar, at a few hours notice, with Captain D'Aguilar, which I did not find it convenient to accept. Finding it impossible to obtain any redress at Alicant, I embarked on the 1st of May on board the Spanish frigate Esmeralda for Cadiz.

MOORE *versus* ADAM, ESQ.

Copy from Mr. Gurney's Short-hand Notes of the Proceedings on the Trial of this Cause in the Court of King's Bench, *by a Special Jury, before the Right Honorable* Lord Ellenborough, *December* 21, 1815.

The Declaration was opened by Mr. Flannagan.

MR. SERGEANT BEST.

MAY IT PLEASE YOUR LORDSHIP,

GENTLEMEN OF THE JURY,

I AM exceedingly sorry to have occasion to be called upon to present this cause to you. Gentlemen, you have heard from my learned friend who has opened the pleadings, that it is an action for an assault; and in the frequency with which you assist in the administration of justice, I have no doubt you have been often told there is no class of cases in which there is so great a

difference as that to which this belongs. I will venture to state to you in the outset, and to state with confidence, that there never was a case of this description presented to an English jury which called for larger damages than the present;[1] and, Gentlemen, that will be the only question for defence; it is absolutely impossible the Defendant can have any.

Gentlemen, "the Plaintiff in this action is a British merchant. His family, for more than half a century," as probably some of you Gentlemen connected with the mercantile concerns of the world may know, "had had a large establishment at Alicant, in Spain; at the head of which, at the time of this transaction, the Plaintiff was." The Defendant is an officer of great rank, and I believe, Gentlemen, from all I have heard of him, of great merit,[2] in the British army. He is at present a Major-general, and at the time of the assault of which the Plaintiff complains he held the rank of Colonel, and

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[1] How can this agree with estimating them at 500l., as it will appear hereafter he did.

[2] One is at a loss to conceive how the Learned Sergeant should feel it necessary to eulogize the Defendant.

also the situation of Adjutant-general to that part of the British army in Spain which was stationed at Alicant. Gentlemen, Alicant was, I believe, during the late war, and certainly, as we know from history,[3] has been in former wars, a most important military station. There was a large British, and I believe a considerable Spanish force stationed there in the year 1812; and, Gentlemen, I am very free to admit that it must frequently happen that when it is necessary to bring a large force to any particular point, it becomes a matter of necessity to use that right of war[4]

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[3] Perhaps the Learned Sergeant employed the evening before the trial in ransacking magazines for an account of Alicant. If he had made the inquiry of me, I would have told him that in the War of Succession part of a small English garrison had been blown up with a piece of the rock in which the castle stands, through the presumption of their engineer; and that, in the American War, a French convoy took refuge there, and raised some batteries on the western side of the bay for protection. But if a large army was ever encamped there before, as in "a most important military station," it must have been before the Deluge.

[4] This statement is altogether injurious to Plaintiff. The allied army had been in Alicant for three or four months, and the principal part of the army was

(a right which can only exist in war, and only be created by the strong necessity of war) of quartering men upon private individuals. Gentlemen, it is a dreadful right to be exercised upon those who live in a district within which it is to be exercised; it is important, therefore, that it should be exercised with the greatest temper and discretion; and I believe, according to the practice of the army, the exercise of it is committed to the management of one officer; with that management no other officer in the army ought on any account to interfere, whatever be his rank; indeed, the higher his rank be, if he violates the orders and regulations of the army, the more culpable is his misconduct, and the greater is the mischief that he does.

Gentlemen, in the year 1812, the Plaintiff had occasion to come to England;[5] he returned to Alicant in the course of that year, and upon his return he not only found that the whole of his warehouses were occupied by

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moved forward, and therefore there could not be any necessity for a summary enforcement of the billets, and of this fact the Learned Sergeant was fully informed by his brief.

[5] I came to London in November, 1807, and left it in July, 1812.

soldiers, but that the soldiers were also in possession of every room of his private house; he has a house to which his warehouses are attached; he has another house at some little distance in which he resides. Gentlemen, he was not one of those persons that was disposed to quarrel under the then circumstances of Alicant with the quartering of soldiers upon him, but it occurred to him that he had more than his allowance, and he thought it necessary, therefore, he should obtain some relief, and for that purpose he applied to the Spanish General Caamano, who thought it was necessary he should be relieved, and he wrote the order which I will take the liberty of reading to you :[6] "It being equitable that the burthen of quarters which the inhabitants of this city are suffering should be equally divided, and according to the capacity and conveniences of their houses

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[6] Why the Learned Sergeant picked this paper out of his brief, not noticing the English Quarter-master-general's, I am at a loss to decide, unless it was because I had nothing to say to it. This order was obtained by Mr. Strange before my arrival, and it was in contradiction to my wishes and intentions, which were to allot my mercantile house exclusively for quarters.

and property, and complaint having been made to me that the house of Messrs. Moore and Co. has experienced many oppressions, having been deprived not only of four warehouses employed in their commercial business, without even one being left for that purpose, but that five different persons are billeted in their dwelling-house, so that they have not sufficient room left for carrying on their business; on which account it becomes necessary that your Excellency should take measures for immediately freeing it of four of the five persons billeted therein; and subsequently, if the scanty supply of quarters should render it necessary, they will be burthened in due proportion; for which purpose it will be necessary that you make it manifest to me that there is no inhabitant without exception that has not some person billeted on him.—God preserve you many years."

Gentlemen, I think it is extremely apparent from this letter, that the firm to which this gentleman belongs had had their due and more than their due share of soldiers quartered upon them;—for the Spanish General thought it right, on a proper application being made to him, to relieve these gentlemen from the burthen under which they labored.

Gentlemen, they were relieved for a time—but it will appear to you, that afterwards, though they had more than certainly were allowed by this order, they[7] voluntarily took in several officers, who were brought in wounded: but it happened that about the 16th of December (the letter I have read to you being dated the 6th of October in the same year) the firm to which this gentleman belonged were treated pretty much in the same manner as they had been before this complaint was lodged, which gave occasion for the letter I have read; and I believe these gentlemen remonstrated with those in authority on the situation in which their house was placed.

[8]Gentlemen, on the 16th of December you will be astonished—I say astonished, when I have stated to you the rank of this gentleman, the command he held—the high and important office with which he was invested in the British army; you will be astonished,

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[7] I am at a loss to discover what part of the learned Sergeant's brief gave rise to the whole of the following statement.

[8] The whole of this is romance, as any body may see by taking the trouble of comparing it with my Statement.

that a man, in that situation, should think proper to come to the house of this Plaintiff, attended by a file of men, some of whom he stationed in the front of the house, others he stationed at the back of the house, and gave other indications of a hostile intention against this gentleman, which so frightened him, that he attempted to make his escape from the house, but he found soldiers were stationed to prevent it:—for what was he to be kept? as you will find, to be insulted in his own dwelling-house. The Defendant came into the cellar to which the Plaintiff had retreated; for when he saw the soldiers drawing up, he retreated from the room in which he was into the cellar, where some workmen were at work; the Defendant asked him whether he had not been publishing some letter in the Diario—(which is the paper in which the government papers are usually circulated amongst the public;) the answer I believe was, that he had: he then asked him whether any of the persons standing near understood English: the insult would not have been great enough unless there were some persons who could understand the language in which it was conveyed; he was told there was a man who understood English—then he said, "In the presence of that man I tell you, that, if you

ever dare to publish any thing of me, I will horsewhip you in your own house." This was strange, even if he had published any thing of General Adam, but I venture to defy the counsel for General Adam to-day to prove, that the Plaintiff had ever published any thing in the Diario respecting General Adam, or any man connected with him. Gentlemen, this was on the 16th; he was told tauntingly—"So you complain of having soldiers in your house do you; you shall have enough of that:" and immediately four soldiers were ordered to be stationed there to keep possession of his house.

Gentlemen,[9] I should state to you that, at this time, almost every room in his house, with the exception of the drawing-room, a large bed-room adjoining the drawing-room,

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[9] The whole of this is in direct contradiction both to the learned Sergeant's brief, and to the written observations sent to him, in which it was most specifically stated, that, not only no person was billeted in that house, after the removal of Captain Pearson, but that, from the circumstances therein stated, I could not carry on my business, without having that house exclusively at my own disposal: the effect of this misstatement, which was certain to be contradicted, on the minds of the Judge and Jury, need not be expatiated upon.

and a small one beyond it, were in the occupation of British officers and soldiers; there was only one sleeping-room left to Mr. Moore himself, and that was a small bed-room within a larger-bed room, adjoining the drawing-room; in that bed-room Mr. Moore then slept. Gentlemen, on the 18th of December Mr. Moore was surprised by another visit. Mr. Moore, I believe, was in his dining-room, when General Adam entered attended by an officer,[10] by a clergyman, certainly an odd message for a clergyman to be attending upon, and a serjeant of the army. I shall have occasion to call that serjeant; and I beg it may be understood, I know[11] enough of the family of General Adam, and of him himself, to believe, that he would not tamper with the serjeant, and that he cannot have any desire, whatever might be the consequences, that he should speak any thing but the truth, and I believe that he will speak the truth, and it will appear, that the serjeant

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[10] Two officers were stated in the learned Sergeant's brief, one of them by name.

[11] I do not:—this declaration was most extraordinary; he knew the witness was a hostile witness, and, in justice to his client, he ought to have waited to make compliments till they were clearly merited.

was addressed on that day by Colonel Adam in these words: "Power, will you beat a man for me?"—"Oh yes," said he.—Upon which General Adam said, "Then come along with me:" and they set off from the quarters of Colonel Adam, and went to the house of the Plaintiff. Colonel Adam was one of the persons,[12] a brother officer the second, the clergyman the third, and the serjeant the fourth. When they entered the house of the Plaintiff, Mr. Moore, they found him just about to sit down to dinner. Colonel Adam went up to him and presented a paper, asking Mr. Moore whether that paper was his hand-writing. Gentlemen, Mr. Moore[13] immediately answered that it was his hand-writing; upon which Colonel Adam did—what? now if Colonel Adam had been in a passion, one should think he would have struck this person himself, if there had been any thing offensive in this paper; but they are in possession of that paper, and I will venture to state, that, if they will produce that paper, it will be seen there is nothing

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[12] What is become of the other officer in the learned Sergeant's brief?

[13] The learned Sergeant's brief gives a very different statement of the matter.

contained in it that could give offence to the worst-tempered man alive.[14] If that paper is not produced in the course of this cause, I am sure you will infer with me, that there is nothing offensive in it or it would be produced.

Gentlemen, upon this question being put by Colonel Adam and the answer given, Colonel Adam, as if the Plaintiff, a British merchant, was an animal too loathsome to be touched by an officer of his rank, thought proper to order the serjeant to beat this gentleman in his own house, with a stick Colonel Adam had before given him[15] for the purpose;—and a serjeant in the army, acting under the command of a colonel of the army, who was also adjutant-general of that army, gave the Plaintiff, in his own house, four severe strokes with that stick, and was going on, when he

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[14] I was of opinion the learned Sergeant should have read that paper, as well as all the other papers in his brief: the only rational ground for not reading it, and stating my reasons for writing it was, to oblige the Defendant to produce it, and procure himself an opportunity of replying; but the learned Sergeant seems to have known this would not be necessary by his finale—which leaves him without any excuse for his statement of my case.

[15] Not stated in the brief.

was told, by Colonel Adam, that was enough; —enough! Good God!—what could be added more?—what insult could be greater?—what degradation could be lower than that which this British merchant was reduced to by this most ignominious chastisement?[16]

But, Gentlemen, though any man alive would have thought this enough of injury and insult, it did not satisfy Colonel Adam; he wanted no apartments in the house of the Plaintiff; that I will prove to you by his subsequent conduct. But, Gentlemen, what will you think of this gentleman, after he had beaten the master of a house in his own house, going up stairs, and seeing how the different apartments in the house were disposed of, on finding them all disposed[17] of, with the exception of one, a bed-room of the Plaintiff himself, for the use of different British officers, insisting immediately that the Plaintiff should give up that bed-room?—To whom?—To Colonel Adam himself?—Did he want it?—

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[16] There is no accounting for tastes: I stated the facts, and left the comments on them to others, therefore I cannot quarrel with the learned Sergeant upon this score; but I think the taste of this comment very bad.

[17] The reverse was stated to the learned Sergeant.

If he did want a bed-room under the circumstances, was the town in that state in which it was impossible any other bed-room could be got in that town?—If there could be another bed-room got in that town, Colonel Adam ought not, in my opinion, to have attempted to take that—indeed, I repeat, under no circumstances could he take that, for he was not the Quarter-master-general, he was the Adjutant-general, and it was for the Quarter-master-general to judge what quarters he should have. My client was asked to give up the key of that bed-room in which he slept; his answer was this—an answer that I am sure you will approve of—"Every thing else by Colonel Adam has been done by force, and if you want my bed-room that shall be taken by force." Gentlemen, you will find that that force was immediately used, for the key was forcibly taken from the person who had it—the door was opened, and my client was turned out of his own bed, and obliged to sleep for that night on the floor of his warehouse [18]—and for what?—To accommodate Colonel Adam?—No, he never came near the place. Again—the bed was unused

[18] It is difficult to conceive where the learned Sergeant found this statement.

by any body but the Plaintiff, was not permitted from wantonness only—for I defy any man to find another cause—to occupy the only bed-room in his own house, and the name of Colonel Adam was irregularly—for I defy my learned friend to justify that—I say, if that was the proper place for Colonel Adam to be quartered, it should be by the Quarter-master-general; but by the orders of Colonel Adam, his own name was stuck upon that door as being his quarters.

Gentlemen, under these circumstances, what was the Plaintiff to do?—He had been insulted in his own house, and threatened with personal violence, on the 16th; [19] that threat had been carried into execution on the 18th—there was nothing but a damp warehouse floor left to him in his own house to sleep on—all civil authority in that town was

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[19] *That threat* had *not* been carried into execution on the 18th—that threat was to prevent my saying any thing of Col. Adam in the Diario; and I could only make his conduct on the 18th public through that channel; this suspended purpose was to be carried into execution *by some delegated commission,* in the event of my remaining at Alicant, or I was left exposed to all risks of personal injury, and to all manner of falsehoods and misrepresentations, without being permitted to publish the truth.

at an end; Colonel Adam was of high rank in that army? the complaints of the Plaintiff could scarcely expect, in the din of war, to be heard in that town; he had nothing, therefore, left him but the resolution he took, to leave his house and family in the possession of the soldiers, and to retire to the only place where he thought he could be sheltered from further violence, to the protection of a convent.* It is this which constitutes the latter part of our complaint. We complain not only that we have been assaulted, but that we were forced from our dwelling-house at a time when the Plaintiff was carrying on trade to an immense amount, producing enormous profits, that he was under the necessity of suspending his trade, there was no man to answer his bills, and ruin has been brought on that hitherto flourishing concern, and that owing to the illegal, arbitrary, and wanton violence of this *distinguished* [20] officer in the British army.

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* I did not retire to the protection of a convent; but the convent I went to was the place nearest to Alicant in which I could reside with safety and convenience, in hopes of directing from thence my mercantile establishment.

[20] *Distinguished* by what? By a musket-ball finding him within its range among thousands of comrades equally brave. So situated, it requires more resolution to run away than stand one's ground.

Gentlemen, I have now stated to you all the circumstances connected with this case. I shall have no difficulty in proving them, and I re-state to you, that it is impossible the Defendant can give to this any legal answer—that he can offer to you any defence that shall prevent my entitling myself to your verdict; and the only question that will then remain is what damages you shall give.—Gentlemen, I ask you again, if these facts should be proved, was I not warranted in stating, that it was impossible to produce to a jury at Guildhall a case that called upon them to give larger damages.[21] When I look at the conduct of the Defendant, I am at a loss for words,[22] feeling the respect I do, not only for the profession to which this gentleman belongs, but to the family to which he belongs. I am afraid of trusting myself, lest words should escape me which I should be sorry for; and yet I have a fear [23] that I

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[21] The learned Sergeant does not seem to have thought so himself, nor do I upon his statement of facts.

[22] I should have thought the learned Sergeant, in the situation in which he stood, should have felt respect for nothing but the outraged laws of his country and his duty to his client.

[23] I regret not having seen the learned Sergeant's countenance when he expressed this fear.

shall not do justice to my client, in abstaining from applying to this conduct the terms that fairly belong to it. Will it be said he is an officer of great merit and high rank—so much the worse was the situation of the Plaintiff. If an inferior officer had done this, if a man of no account had done this, we could have had redress; but it was in vain to complain against the Adjutant-general, against a person held in so much esteem among his superior officers [24] as the gentleman who is the object of the present complaint—the only complaint which could be made with effect is that which is to-day made, to an independent English jury.

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[24] I am at a loss to conceive from what quarter the learned Sergeant received his instructions as to this statement; it was not from his client, for I never heard that he was held "in so much esteem" by his superior officers; but this officer "of great merit" took care that it should not be in my power to prove his ill conduct to these superior officers; for seeing Mr. James Budd at the room-door when he was presenting me the letter I had sent to head-quarters, he frightened him away, then shut the door of that room, and proceeded into an inside one, into which I also went, without any suspicion *of his suspended purpose*, and he there carried it into execution.

Gentlemen, I take it for granted I shall have no opportunity of addressing you again. The cause of Colonel Adam *(and I am happy*[25] *that it is)* is in the hands of one who has the talent to make the worse appear the better cause:[26] if any man can, my learned friend will: you will have by and by as able a speech as it is possible can be made; but you will not decide this cause upon the merit of the speech; if that were to be the case, dreadful would be the situation of the man whose case was opposed by my honorable and learned friend: you will not look to the advocates, but to the facts proved in the cause; and in deciding this cause you will allow your imagination to operate; you will place yourself in the situation of this man;[27] you are yourselves merchants; imagine (God forbid the thing should ever come to pass) that this country should be over-run with a

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[25] Why happy?

[26] This is the part of the learned Sergeant's speech with which I am sorry to say I fully agree.

[27] I am certainly pleased with the idea that I am really a man, and I hope "tenax propositi" too; but in the courtly succession of ideas in the head of the learned Sergeant, I suspect a man and a gentleman are quite different beings.

foreign force, and that it should be necessary for the purpose of opposing the progress of that force that an army should be collected of such magnitude that the soldiers should be quartered in the houses of private individuals; imagine yourselves individuals belonging to that place; imagine yourselves treated as this gentleman has been; complaining as this gentleman has complained; his injuries repeated; and then imagine yourselves British merchants assaulted, not by the hand of a gentleman, but flogged in the manner I have described, as if unworthy to be touched by him; and as if the hand of a man[28] of the lowest description was the only

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[28] Sergeant Power was certainly not a friendly witness, but the learned Sergeant, whose acquaintance with the human heart leads him to consider a motion for thanks acceptable in the highest quarters, can scarcely think such an appellation *from my counsel*, accompanied by so coarse a distinction of ranks, palatable to a soldier, who possibly has some feelings as well as a prince, and therefore not likely to prejudice him in my favor.

The learned Sergeant had declared his belief that the witness would speak the truth—not indeed from any conviction that he was himself possessed of a particle of honor or conscience—but because the chivalrous spirit of Col. Adam's connections would

one by which it could be properly inflicted; and then say what you should expect at the

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not permit a suspicion of his being tampered with on that side. He now describes the witness as a man of the lowest description, and consequently liable to be tampered with under these circumstances; what impression was likely to be produced by the learned Sergeant's having wasted his eulogizing powers on the Defendant, and presented my case as a mere action for money, contrary to his instructions in writing as follows :

" My object is not to obtain damages as a compensation for the assault, nor is it to obtain large damages as a compensation for the injury done to me in consequence of it; my object is not to prove to the people of Alicant that I was ill-treated, nor even to prove to them and to the world at large that I did not deserve that treatment: (these were the different objects I was supposed to have by the learned counsel at consultations,) my object is to prove that in retiring from Alicant as I did I acted with judgment and propriety. In retiring from Alicant I eventually abandoned the interests of my correspondents in both hemispheres, who might have consigned property to a very large amount to my care, confiding on their knowledge of my mercantile establishment for half a century, and on the security that the presence of an English army might be supposed to afford. It is therefore necessary to shew that by my conduct I consulted their interests as well as mine; and this can only be satisfactorily

hands of another jury of your country; that justice which you would expect should be measured out to you, that you will mete out to the present Plaintiff.

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done by the verdict of a British jury approving thereof by awarding special damages."

I had further told this man, when he invited me to an evening conference to hear a proposal from the opposite party, that it was not in the power of all Colonel Adam's family to compensate my losses in a pecuniary point of view; but that that was the least of it; for that I should prefer the verdict of a jury giving me the damages laid which were considerably under my real loss, though I did not receive a farthing, to the 30,000l. without that verdict; and made him recollect that I had said so at the last consultation I was at, and nearly repeated the same words: and yet this man had the—what shall I call it?—to tell me on coming out of court: "I told you not to go for the special damage; if you had not you would have got a thousand pounds." I felt nothing I could say would be intelligible to such a man, so I merely told him: "I would not have gone for them at all." Poor man! he cannot perhaps conceive that even after "Ruin has been brought upon me, and no man left to answer my bills," I would give the odd 500l. that my case had been in the hands of an advocate of sufficient talents to have extorted from his majesty's attorney-general *Amicus Plato sed magis amica veritas.*

EVIDENCE FOR THE PLAINTIFF.

Sergeant WILLIAM POWER sworn.

Examined by Mr. Topping.

Q. Were you, in the year 1812, a sergeant in the army?—A. Yes.

Q. Of what regiment?—A. The 58th regiment of foot.

Q. Where were you in the month of December, 1812?—A. In Alicant, in Spain.

Q. How was Alicant occupied at that time; was it occupied by the inhabitants and any force?—A. There were British troops and Spanish troops in it.

Q. What number do you imagine?—A. I cannot tell.

Q. As nearly as you can tell?—A. I cannot guess; there were not many quartered in Alicant,[19] they were quartered in the neighbourhood.

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[19] Many, however, without rhyme or reason, chose to have quarters in Alicant, to use occasionally, like town and country houses.

Q. Do you know the Defendant, Major-general Adam, then Colonel Adam.—A. Yes.

Q. Did you see him at any time in the month of December in that year, 1812, at Alicant?—A. Yes.

Q. Where did you see him?—A. At the Adjutant-general's office.

Q. Was he at that time Adjutant general?—A. Yes.

Q. Were you sent for there?—A. I was employed there.

Q. In what situation were you at the Adjutant-general's office?—A. I was assistant clerk.

Q. You were a sergeant and also assistant clerk at the Adjutant-general's office?—A. Yes.

Q. Did Colonel Adam, the Defendant, say any thing to you on that day; do you recollect the particular day?—A. No; I do not recollect the day, nor yet the month.

Q. Was it the latter end of the year?—A. It was the latter end of the year 1812.

Q. You think it was about this time of the year 1812?—A. I think it was earlier.

Q. Who was at the Adjutant-general's office when the Defendant, Colonel Adam, spoke to you?—A. I do not recollect.

Q. Did you know the Plaintiff in this cause, Mr. Moore?[30]—A. Yes, I did—not at that time I did not know him.

Q. You had not known him before that day?—A. No, I had not.

Q. You had not known such a firm as Moore and Company in Alicant?—A. I knew there was such a firm, but I had not known his person.

Q. You knew there was such a firm, as merchants in the town?—A. Yes.

Q. What did General Adam say to you?—A. Respecting what?

Q. I am not allowed to lead you very distinctly to it: what did he ask you?—A. He asked me whether I would beat a man for him.

Mr. Attorney-general. I shall not make any captious objection in point of form; I know you will not lead unnecessarily.

Mr. Topping. He asked you whether you would beat a man for him?[31]—A. Yes, he did.

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[30] I had been several times at the house where the Adjutant-general's office was, and spoke with the Sergeant there.

[31] In the month of April, 1813, Sergeant Power was made provost-marshal, and Mrs. Lascy told me

Q. What time was this?—A. About one o'clock in the afternoon, I think.

Q. Do you recollect whether any body was present when this passed?—A. I do not.

Q. What was your answer?—A. Yes, Sir.

Q. Your answer was yes?—Yes, it was.

Q. Having said this to you, what happened then?—A. Shortly afterwards he asked me to go with him.

Q. Did he tell you to what place?—A. No.

Q. Did you accompany him?—A. I did.

Q. Did any body else go with Colonel Adam and yourself?—A. Yes.

Q. Who?—A. I do not recollect them at present, but I believe one was a Lieutenant Roquefeuille.

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he was made an officer, and that she had given him the enhorabuerra. I shortly after met him in gay attire, in the square fronting both houses, and gave him joy of his promotion, and shook hands with him, asssuring him I bore him no ill-will; to which he said that I could not, as he had merely acted in obedience to his superior officer: I told him I knew that, but that I did not consider that he was obliged to obey, except in matters appertaining to his military duty: he answered that he was obliged to obey him, and that Colonel Adam must have been instigated by some Spaniards to act in that manner.

Q. Was there another officer, a Captain?—A. There was another, but I do not recollect his name.

Q. Was there any other person besides Lieutenant Roquefeuille and the officer?—A. No; I do not recollect that there was;[32] I have been of opinion lately that the Reverend Mr. King was with us, but on consideration I do not think he was.

Q. You have been of opinion lately that he was, but you do not think so now?—A. I do not.

Q. You are not sure?—A. No.

Q. Where did Colonel Adam and yourself happen to be joined by the Captain and the Lieutenant?—A. From the Adjutant-general's office.

Q. Then they were there?—A. Yes; but not when he asked me the first question.

Q. They were not there when he asked whether you would beat a man for him?—A. No.

Q. How long was it before you saw Lieutenant Roquefeuille and the Captain?—A. Within an hour.

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[32] The sergeant seems unfortunately to have forgot the chaplain, and recollected the billet glued on the door since his last arrival in London.

Q. Did they come to the Adjutant-general's office.—A. Yes they did.

Q. Having come to the Adjutant-general's office, what became of Colonel Adam and yourself and those two officers?—A. We went to Mr. Moore's house.

Q. What distance is Mr. Moore's house from the Adjutant-general's office?—A. About 150 yards.

Q. Was that the house that you went to, that is adjoining the warehouses; you know the warehouses of Moore and Company?—A. No, I do not know the warehouses.

Q. Was it a house to which there were warehouses belonging—did you see any warehouses?—A. No, not to my knowledge; I do not recollect any.[33]

Q. Where did you go to first?—A. Into Mr. Moore's house.

Q. You went directly into Mr. Moore's house?—A. Yes.

Q. General Adam, yourself, and the two officers?—A. Yes.

Q. Did you knock, or in what way did you

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[33] The party went through a warehouse so full of large casks (holding about 350 gallons each) that they could scarcely pass.

go in?—A. I do not exactly recollect[34] how we got in—at the street door.

Q. Will you recollect whether, when you got to the house, you saw the Reverend Mr. King or not?—A. No, I do not recollect indeed.

Q. On going into the house, to what room did you proceed?—A. To Mr. Moore's room; or the room in which Mr. Moore was at that time.

Q. Was he alone?—A. He was.

Q. What was he doing in the room when you went in?—A. I think he was writing.

Q. It was a sitting-room?—A. Yes.

Q. Upon Colonel Adam, and yourself, and those gentlemen coming into this room, where he was writing, did Colonel Adam address himself to Mr. Moore?—A. Yes, he did.

Q. What did he say to him?—A. He took a paper out of his pocket and asked him whether he was the author of it.

Q. He shewed the paper to Mr. Moore, and asked him if he was the author of it.—A. Yes.

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[34] They must have watched Mr. Budd from the Adjutant-general's office, and the sergeant acknowledged as much on his arrival at Portsmouth, for they pushed into the warehouse after him.

Q. What answer did Mr. Moore give to that?—A. Mr. Moore said it was his hand-writing.

Q. What was the next thing that happened on that answer being given?—A. He said it was his hand-writing, but he did not mean it to Colonel Adam.

Lord Ellenborough. He did not mean it to Colonel Adam, or for Colonel Adam?[35]—A. Those were the words to the best of my recollection.

Lord Ellenborough. Was the paper read aloud?—A. No, not to my knowledge, I do not recollect that it was.

Lord Ellenborough. Did you hear it read?—A. No, I did not.

Mr. Topping. Mr. Moore having said he did not mean it to Colonel Adam, what was the next thing that was done?—A. He asked Mr. Moore why he refused the Reverend Mr. King a billet on his house.

Q. What answer did Mr. Moore give to that?—A. He said it was not lawful, nor that no person was authorized, to the best of my knowledge, to billet any person on his house.

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[35] As I have given an exact account of what really passed, in my Statement, I will make no remark on this part of the evidence.

Q. What did General Adam say to that?—A. General Adam said that he would give his quarters to Mr. King, and he himself would remain in Mr. Moore's house.

Q. What did Mr. Moore say to that?—A. Mr. Moore said that he would not let General Adam or any other person remain in his house unless by force.

Q. What was then done?—A. Mr. Moore also answered, if by force of arms you take my entire house, I will leave it—otherwise, you will not remain in it, you nor any other person; meaning, unless by force of arms.

Q. What was then said or done?—A. General Adam ordered me to lay on him.

Q. Now be so good as to tell us the exact words, as far as you can, in which Colonel Adam addressed you—did he call him by his name?—A. When he ordered me to beat Mr. Moore do you mean?

Q. Yes.—A. "Lay on him, Power."

Q. Had you any thing in your hand then?—A. I had a stick I usually walked with.

Q. And which you had walked with, I take for granted, there from the Adjutant-general's office?—A. Yes.

Q. Then Colonel Adam having said lay on him, Power, what did you do?—A. I seized Mr. Moore with my left hand by the collar,

and beat him about the shoulders with a stick I had in my right hand.

Q. How long did you continue to beat him?—A. I gave him three or four blows to the best of my knowledge, which Mr. Moore endeavoured to keep off by raising up his arm.

Q. What passed then?—A. After giving him three or four blows, the General said stop, Power.

Q. Did you do so?—A. I did so directly.

Q. What passed then when you stopped beating?—Mr. Moore said that if there was law to be had in England, he would have it afterwards, when he returned to England.

Q. Did General Adam make any reply to that?—A. I do not recollect.

Q. Were the captain you have mentioned and the lieutenant you have mentioned present in the room at the same time?—A. Yes, they were.

Q. Did any thing further happen in that room?—A. No, I do not recollect any thing further happening.

Q. Not in that room?—No.

Q. Nothing further happening in the room; do you recollect where Colonel Adam went?—A. I recollect going into another room of Mr. Moore's house afterwards, but I do not recollect what happened.

Q. You recollect whose going?—A. Myself and the party.

Q. Do you recollect what room it was?—A. The room Colonel Adam occupied afterwards.

Q. Do you know whether it was the bed-room of Mr. Moore?—A. I do not know indeed.

Q. Was it a bed-room?—A. There was a bed-room in it---a bed-room and sitting-room.

Q. Do you remember finding the door of any room locked?—A. No.

Q. Recollect yourself: do you remember being sent with any message at this time by Colonel Adam to Mr. Moore about any key?—A. I do recollect being sent by Colonel Adam to Mr. Moore, but I actually forget what message I took, or what the answer returned was.

Q. Do you entirely forget what the subject was?—A. I do.

Q. Whether it was respecting a key?—A. I believe it was for a key.

Q. You have told us, I think, that one of the doors was locked?—A. No.

Q. You recollect the subject on which you was sent was a key?—A. Yes.

Q. For what purpose was that key wanted, as General Adam stated to you?—A. I forget.

Q. Did you deliver the message, whatever it was, to Mr. Moore?—A. I did.

Q. Perhaps I may bring it to your recollection; did you get any key?—A. I forget indeed.

Q. Was this room upon the same floor with the room in which the circumstances you have stated happened, or was it up stairs?—A. It was up stairs.

Q. You and the party you have mentioned went up stairs; you were sent down by General Adam with some message to Mr. Moore?—A. Yes.

Q. Did you go back to General Adam?—A. I did.

Q. Did General Adam and yourself, and the two officers, then come down stairs?—A. Yes.

Q. Did you go into the same room where you had been before with Mr. Moore?—A. No, I do not recollect that we did.

Q Did Colonel Adam see Mr. Moore?—A. I do not recollect that he did.

Q. You do not recollect any circumstances respecting a key then?—A. No, I do not.

Q. Do you remember any conversation passing between Colonel Adam and Mr. Moore respecting the room up stairs?—A. No, I do not, indeed.

Q. Do you recollect a Mr. Budd being present?—A. I do.

Q. Although you do not recollect the particulars of the conversation that passed after you had been up stairs and come down, do you recollect whether Mr. Budd was present at that conversation, whatever it was?—A. No, that I do not; I recollect Mr. Budd being in the house.

Q. You saw him in the house?—A. I did.

Q. Did you know who Mr. Budd was before that day?—A. No.

Q. Were there any soldiers in the house at this time?—A. Not to my recollection.

Q. Did you see any soldiers in the house, either below or up stairs, on this day, when you went with Colonel Adam?—A. I do not recollect seeing any.

Q. Did you see any on the outside of the house?—A. Not that day[55] to my knowledge.

Q. When you were going away, did you see the Reverend Mr. King then?—A. No, I do not recollect seeing him then.

Q. Upon the following day was any thing done; did you do any thing by the direction

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[55] If he had been asked what day then? he would, perhaps, have recollected what passed on the 16th.

of Colonel Adam at the house of Mr. Moore? —A. I do not recollect whether it was exactly on the following day or not.

Q. How soon after was it?—A. In a day or two afterwards.

Q. What was it you did at the house of Mr. Moore by direction of Colonel Adam?—A. I put the name of Colonel Adam on each street door.[36]

Q. Are there two doors that front the street? —A. There are.

Lord Ellenborough. Was that by paint, or chalk, or how?

Mr. Topping. In what way did you put them on?—A. By pen and ink and paper.

Q. How did you fasten the paper on the two doors?—A. With wafers.

Q. Then you put the name of Colonel Adam on with pen, ink, and wafers?—A. Yes.

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[36] It was on the back door from the garden on the morning of the 19th December, alongside of the billet which I had glued on the evening before, as I was informed by a person I sent thither for some things I wanted to take with me, who also informed me the four soldiers were withdrawn; and in the beginning of the following February, it was put upon the front door to the square, when Colonel Adam opened that entrance which I had closed.

Q. Did you do any thing at the back door of the house!—A. No.

Q. Do you not recollect that?—A. No.

Mr. Gibson. His answer was each street door, he did not say the front door.[37]

Mr. Topping. Were the two doors you have been speaking of front doors of the house?—A. Yes, there was one at each side of the house.

Q. Did you afterwards take possession of the house?—A. Myself---yes, I did.

Q. How soon after this did you take possession of it?—A. I do not recollect exactly, perhaps about a fortnight.

Q. Under whose directions did you take possession of it?—A. General Adam's.

Q. Did Colonel Adam sleep there at all?—A. Oh, yes.

Q. When did he sleep there?—A. Previous to my taking possession of it.

Q. Between the time of this assault happening and your taking possession, had Colonel Adam slept there?—A. Yes, he had.

Lord Ellenborough. I have taken him

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[37] But the front door was completely closed up, and it was only the back door that was open from the 3d of December, 1812, to the beginning of February, 1813.

down that Colonel Adam had slept there upon his taking possession; had he slept there at any time previous ?[38]

Mr. Topping. I will ask him, my Lord. You say you took possession in about a fortnight---between the time of your taking possession and this having passed between Colonel Adam and Mr. Moore had he slept there? —A. He had.

Q. Do you know whether he slept in the bed in which Mr. Moore had slept?—A. I do not know whether it was the bed in which Mr. Moore was to sleep.

Q. Whereabout was the room in which Colonel Adam slept?—A. Up stairs from where we saw Mr. Moore.

Q. Was that the bed-room you mentioned to which a sitting-room was attached?—A. Yes, it was.

Q. Can you tell us whether the door of that bed-room was not locked at the time Colonel Adam and you went up stairs?—A. I cannot recollect, indeed.

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[38] I believe he went to sleep there on the 19th or 20th after I had quitted Alicant, in order to give a false colouring to his conduct in the eyes of the public.

Q. Before Colonel Adam took possession of Mr. Moore's house, where were his quarters?—A. In the Adjutant-general's office, a room in the Adjutant-general's office.

Q. That he left upon his taking possession of Mr. Moore's?[39]—A. Yes.

Q. Had you a deputy or a quarter-master-general at Alicant at this time?—A. Yes.

Q. Who billetted?—A. I do not know whether he billetted or not.

Sergeant William Power.

Cross-examined by Mr. Attorney-general.

Q. Colonel Adam had occupied for quarters a room at the Adjutant-general's office?—A. He had.

Q. The Rev. Mr. King, of whom you have been speaking, was the chaplain of the forces which had recently arrived at Alicant?—A. He was.

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[39] When he took the key of my bed-room, he said he did not want a bed as he would bring his own. The drawing-room and adjoining bed-room were since the 16th at the disposal of any one whom the four soldiers would permit to take them. He never slept in my bed, which was a little camp bed, and was sent to me at Orito.

Q. And the application which Colonel Adam made to Mr. Moore was to know why he refused to permit the Rev. Mr. King, the chaplain of the forces, to take up his quarters according to his billet?—A. Yes.

Q. To which he answered that no person was authorised to billet any body upon his house?—A. Yes.

Q. At that time not only Alicant but its neighbourhood was much thronged with Spanish and with British troops, and the enemy in its very near neighbourhood?[40]—A. Yes, very near.

Q. The enemy were within a very few miles, and expected to attack Alicant immediately?—A. Yes.

Q. The enemy in very considerable force, was not he?—A. Yes, supposed to be.

Q. That is the only answer a soldier can

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[40] The sergeant had said there were not many in Alicant. General Clinton on the 13th Nov. in a letter to General Caamano assured him he was about to move forward, to put himself in communication with General Elism the next day. I was about 15 miles in advance of Alicant from the 19th December, to the 17th March, and walked about the country for miles round without seeing any symptoms of an enemy. The nearest approach towards Alicant was by Marshal Suchet to Castilla in April, 1813.

ever give about the force of his enemy, he was supposed to be in very considerable force?—A. Yes.

Q. At the time that Colonel Adam went to make this enquiry about the refusal of the chaplain's billet, was there any person to your knowledge at that time received in quarters in Mr. Moore's house, was there any body belonging to the British or Spanish army who had quarters in Mr. Moore's house?—A. Not to my knowledge.

Q. When the application was made to him did he represent that he had already his house as we have heard to-day,[41] full of officers and soldiers, and that he had no room for the chaplain?—A. I do not recollect.

Q. Did he make any answer but that nobody had a right to billet any person upon his house, and that if any quarters were to be taken they must be taken by force?—A. I do not recollect any other.

Q. He did say that if any quarters were taken there they must be taken by force?—A. He did.

Q. Upon which Colonel Adam said that if he would not receive the chaplain, the Colonel

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[41] Well might the learned gentleman say, "as we have heard to-day." This story was as new to me as it could be to him.

Adam would give up his own quarters to the chaplain,[42] and would make his own quarters good at Mr. Moore's?—A. Yes, he did.

Q. Did not Colonel Adam upon that state to him that the worst room in his house given up voluntary would do perfectly well for his quarters, but that if he forced him to help himself he should not take up with the worst? —A. I do not recollect.

Q. Was there any thing of that sort said? —A. I do not recollect it.

Q. Did Colonel Adam say any thing to him about yielding some room to him freely, and not putting him to force?—A. I do not recollect.

Q. When you went there upon this occasion, an occasion which no one means to justify, and committed this assault, was there any file of soldiers to barricade the doors?— A. I do not recollect it.

Q. If there had been any you must have recollected it.—A. Yes.

Q. The files of soldiers spoken of are those placed at the door of an officer of his rank?— A. Yes.

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[42] The learned gentleman of course would not ask whether Mr. King was lodged in Colonel Adam's quarters in consequence, or not?

Q. A guard of honour placed at the door of an officer of rank ?—A. Yes.

Lord Ellenborough. And the usual number I suppose, two centinels at each door or one.[43]—A. One, only one at one door that I recollect.

Mr. Attorney-general. I had understood there was one at each door ?—A. No.

Q. You were understood to say so ?—A. No, I only said I stuck a paper on each door.

Q. There was only one centinel at the entrance door ?—A. That was all.

Q. We understand there was but one centinel which, is usual at an officer's quarters ?—A. Yes, an officer of his rank.

Q. At that time Alicant and its neighbourhood thronged with troops, was there any body in the town who had not somebody quartered upon them ?—A. I do not suppose there was one, and two or three officers in some houses.

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[43] The sergeant must be speaking of what happened after I left Alicant, and he took possession of the house, not of the four soldiers stationed in the body of the house on the afternoon of the 16th, relieved by four German ones on the 17th, and still there at the time of the assault and after it.

Q. Compared with many other houses in Alicant, was not Mr. Moore's a splendid and large establishment?—A. It was.

Q. Compared with the majority of the houses there, except those of persons in high authority?—A. It was.

Q. A large roomy house?—A. Yes, it was a very fine house.

Q. Could he not perfectly well have accommodated the chaplain and other officers without the least inconvenience, I mean that felt as inconvenience at such a season, without putting himself to half the inconvenience which the inhabitants of Alicant were suffering at that time?—A. I think he might.

Q. But he insisted that no person should be quartered there but by force?—A. He did.

Lord Ellenborough. Could he have received any persons without suffering a greater degree of inconvenience than the inhabitants of Alicant in general endured?—A. I think he could.

Mr. Attorney-general. Could he not have done it with much less inconvenience than many of the inhabitants at that time experienced?—A. I think he might.

Q. Generally speaking I believe and hope the British troops were pretty well received by the inhabitants, I know there were excep-

tions, how was that, did they take you into quarters very freely?—A. I think they did not, I think they murmured very much against us.

Lord Ellenborough. How long were they there?

Mr. Attorney-general. How long were you in Alicant and its neighbourhood?—A. Four or five months.

Q. Now I ask you was it not notorious in Alicant that Mr. Moore was a person taking the lead in the discontents against the British troops?

Mr. Sergeant Best. I must object to that.[44]

Mr. Attorney-general. Then I will try whether I cannot put it in another form, I think I can get at it; did you read the Alicant newspapers?—A. I could not read them.

Q. Did you see a little billet upon the outside of Mr. Moore's house, importing these

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[44] I should like to hear any reason for the learned Sergeant's objecting to that question; it was really the point I wished to have canvassed. Colonel Adam's conduct was certainly calculated to have it believed so, and this in part constituted the danger of my remaining in Alicant, unless the contrary was proved.

words, " quarters by force for ever ?"[45]— A. I recollect there was a billet upon his house, and I think the words were, " vive la force."

Q. The billet on Moore's outer-door then mentioned force ?—A. Yes.

Q. And the words written were, " vive la force ?"—A. Yes.

Q. What did you understand that to be success to the British forces, or quarters by force ?—A. Force for ever.

Q. Might not Mr. Moore if he had been so inclined have continued to occupy his house with perfect convenience ; I will not talk of a place almost in siege, but might he not have

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[45] This may be a legal question, but if the learned gentleman was acquainted with the words that were on that billet, I cannot sufficiently express my astonishment at his considering himself justified in asking it. That billet, without signature, and on which I put " Alojado a viva fuerza," with my name, was glued upon the door on the afternoon of the 18th December, and I saw it in the same condition there on the 15th of January following, with a paper alongside of it with these words, " Colonel Adam adjutant general's quarters"; how long they remained there afterwards I cannot say, but during that period at least they were visible to every body who passed by the street, or went in and out of the house.

continued in his own house, and have given quarters to Colonel Adam, and to the chaplain without inconvenience to himself?—A. I think he might very well.

Q. You did not find Mr. Moore at dinner, but writing?—A. Yes.

Q. Did he make a barricado, and a ditch to his house?—A. Both doors were banked.

Q. Both doors were banked?—A. Yes, they were banked up inside.

Q. The street door in front banked up inside?—A. Yes.

Q. And the back door also banked up inside?—A. Yes.

Q. You were obliged therefore I believe to get in at the cellar door?[46]—A. Yes, I think we were.

Q. The paper that was shewn by Colonel Adam to Mr. Moore, Mr. Moore said was his hand-writing?—A. Yes.

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[46] The front door was entirely closed up, but its being so had nothing to do with the subject of quarters, the back door through the garden, which was at this time the only door of the house, was barricadoed after Lieutenant Roquefeuille threatened to break in by force; but as Colonel Adam and others did so on the 16th, and four soldiers kept it open, neither the garden door nor the house door was locked by day or night from that time, so that they could not be obliged to get in at the cellar door.

Q. But he said he did not mean to apply it to Colonel Adam?—A. Yes.

Q. Was it explained what that paper was?—A. No, not to me.

Q. It was part of Colonel Adam's duty at that time, if any body deserted to call them in and give rewards for their apprehension?—A. Yes, it was.

Q. Was it not mentioned to Mr. Moore, was he not asked whether he had not sent out a mock advertisement[47], saying that there had been an advertisement for British deserters, and that they might be found at his house, or the Adjutant-general's quarters?—A. I do not recollect that.

Q. But this paper was shewn to him, and he acknowledged it to be his hand-writing?—A. Yes.

Q. How long did you remain in Alicant after the assault?—A. About a month, I believe, or six weeks.

Q. Did Mr. Moore continue in Alicant

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[47] The learned gentleman must have known that I did not put out any mock advertisement. This may be very proper in an advocate of talents in a case like this, but it would not be, in a plain honest man in the ordinary intercourse of life.

during all the time that you remained there? —A. I do not know.

Q. Did Colonel Adam continue a month or six weeks in Alicant?—A. He was not in Alicant at the time I had possession of Mr. Moore's house, he was on board ship as I understood reconnoitring.

Q. He was absent on duty however?—A. Yes, he was.

Q. And you were there keeping his quarters for him?—A. Yes.

Q. I do not know whether you were there at the time Colonel Adam was brought in wounded?—A. No, I was in the action.

Q. In which of the actions was it he was wounded in the shoulder?—A. The first action, that of Castallas.

Q. You did not go in with him after that wound?—A. I did not.

Q. Did the chaplain occupy that room at the Adjutant-general's office, which Colonel Adam had before occupied?—A. I do not recollect that he did.

Q. But the thing about which Colonel Adam was remonstrating with Mr. Moore was his refusing to give Mr. King quarters? —A. Yes, General Adam's quarters at the

Adjutant-general's office were not fit for any officer.[48]

Q. A small back room?—A. Yes.

Sergeant William Power.

Re-examined by Mr. Topping.

Q. I think you told us on your original examination you had never been at Mr. Moore's house before that day?—A. I had not.

Q. Of course you do not know how Mr. Moore's house had been occupied before you came there with Colonel Adam?—A. No.

Q. Now with respect to that "vive la force," who put up that paper, you do not know?—A. I do not.

Q. Whether it was matter of complaint or of triumph, you do not know?—A. No.

Q. That is equivocal, you speak of this house of Mr. Moore's being a splendid man-

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[48] He had however been there three months, and refused better accommodation at my house when offered it, and he at this time thought it good enough for the chaplain.

sion, recollect yourself, do you know that Mr. Moore had two houses?—A. No.

Q. Was this a large house or a small one with only one room on a floor?—A. It was a very extensive large house.[49]

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[49] In my view of the case the size of the house is of no importance, but as so much was said about it, I will describe it. There was a good room and alcove over the drawing-room, which was crammed with my mother's trunks, boxes, presses, and whatever good furniture could be put out of the reach of General Roche's party; there were two small back rooms, one of which was used as a kitchen by my mother's cook-maid who slept there, and another also full of boxes where Mr. James Budd at this time slept on a bed made of two casks and three or four boards; on the principal floor there was the drawing-room, and adjoining bed-room, which was taken possession of on the 16th, but there was no bed fixed up. In a very small back room I slept on a very small camp bed, and the key of this room Colonel Adam forcibly took. On the lower floor there were three very small rooms about six, eight, and ten feet by ten, running into each other, one to dress, one for a bed, and the third in which the assault was committed. There was also a dining-room, with a back room or two without windows for servants, and the kitchen running under the garden. As to beds there were none, all the double bedsteads belonging to my

A. Who forced the door in?—A. I did.[52]

A. You were sufficient yourself to remove the impediment?—A. We could scarcely get in when we did open the door.

Lord Ellenborough. I think you said, you afterwards got a party to remove the bank?

Mr. Topping. Yes, my Lord, I am going to ask him about that. You say, you afterwards got a party?—A. Yes.

Q. Was that in the evening?—A. Yes; I think the same evening.

Q. What party was it; a party of soldiers?—A. Yes; I think it was.

Q. How many might it take?—A. Four men, or six, I am not sure which.

Q. Of course, they cleared the way?—A. They did.

Q. The bank was removed?—A. Yes, it was.

Lord Ellenborough. Was what was written over the door, "vive la force," mentioned to Mr. Moore by Colonel Adam, or was any thing said about it in his presence?

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[52] If the Sergeant forced a door in, and a back door, he must have been with Colonel Adam on the afternoon of the 16th. This could not have happened after that time.

—A. I do not recollect any thing being mentioned.

Mr. Sergeant Best. Will your Lordship have the goodness to ask him whether that was there before the assault.

Lord Ellenborough. At what period was that up; before or after the assault?—A. It was after the assault that I took notice of it.

JAMES BUDD sworn.

Examined by Mr. Holroyd.

Q. Were you clerk to Mr. Moore in the year 1812, at Alicant?—A. I was.

Q. I believe Mr. Moore, in part of 1812, was in England?—A. He was.

Q. Do you remember the time of his return to Alicant?—A. Yes.

Q. In what month was that?—A. In October.

Q. In October, 1812?—A. Yes.

Q. t or previous to that time, had there been any officers or soldiers in the possession of his house?—A. Which of the houses?

Q. Either of them?—A. Yes, Spanish officers had been at both.

Lord Ellenborough. Had been in possession, or occupied?

Mr Holroyd. Occupied I believe was my term. Was it in that house where the assault was committed or the other?—A. In both houses.

Lord Ellenborough. He has two houses?—A. Yes.

Q. Are they near each other?—A. About a quarter of a mile distant.

Mr. Holroyd. Both of them within the town?—A. Yes.

Q. How many of them might be occupying both those houses at that time, in the whole?—A. At the time Mr. Moore came out?

Q. Or before?—A. Before, there had been different numbers at different times; three, four, and two.

Q. Did you know General Roche?—A. I did.

Q. And his brother?—A. Yes.

Q. Had they been some of the persons who had occupied the houses or one of them?—A. Yes.

Lord Ellenborough. Had they occupied part of one or the whole; General Roche and his brother?—A. General Roche had occupied the whole of one.

Q. Which; the one in which the assault was committed? I suppose one is a better

house than the other?—A. The house in which the assault was committed.

Mr. Holroyd. Is that the better house of the two?—A. No.

Lord Ellenborough. Is the other let out, or are they both houses of occupation?—A. One was the mercantile house, and the other the house for Mr. Moore.

Q. Was that house in which the assault took place, the house of residence or the mercantile house?—A. The residence house.

Mr. Holroyd. Which was the house that Mr. Moore lived in?—A. The residence house.

Q. That was the house where the assault was committed?—A. Yes.

Mr. Attorney-general. By Mrs. Moore you mean the plaintiff's mother?—A. Yes.

Mr. Holroyd. Was she living there before, and at the time of Mr. Moore's return to Alicant and afterwards?—A. Before that time she had been living there, as I understood.

Mr. Attorney-general. She was in England at that time?—A. Yes; she was.

Lord Ellenborough. At what time?

Mr. Attorney-general. At the time of the assault; and at the time of Mr. Moore's return to England.

Mr. Sergeant Best. Oh, certainly.

Mr. Holroyd. What sort of a house was this; the house of residence? . A small house in comparison with the other.

Q. How many rooms for residence might it consist of; I am not speaking of warehouses?—A. Six, or seven.

Q. How many of those six might be bedrooms?—A. Three, or four.

Q. How many rooms were there on a floor —A. Four, or five.[54]

Q. On the same floor?—A. Yes.

Lord Ellenborough. How can you say four or five; you say three or four of them were bed rooms.

Mr. Holroyd. How many stories were

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[53] Certainly, if the learned Sergeant had stated the case correctly, all these questions would have been futile.

[54] It will be seen by reference to my description, that this was strictly speaking the case, on one floor the lowest, but on that only. Perhaps the Sergeant was induced to represent to himself the whole building as mine, but of the five windows in front two only belonged to me, except on the lowest floor, the remainder of it belonged to the adjoining church, to which it had been left by a former proprietor, and was their vestry-room.

there?—A. Three; if the upper one could be accounted such.

Lord Ellenborough. How many bedrooms were there on each floor?—A. One had two, and the other had one, as far as I can recollect; and there was a small room besides that, within.

Mr. Holroyd. Do you remember Captain Pearson being in Mr. Moore's house?—A. Yes; I do.

Q. In which house?—A. In the residence.

Q. Do you know how he came to be in your master's house; he was a wounded officer, was he not?—A. He was so, as far as I could see; he had his arm bound up.

Q. Do you know how he came to be in Mr. Moore's house?—A. I have heard Mr. Moore speak of it.

Q. You must not tell us what Mr. Moore said; were you present when application was made to Mr. Moore to receive him?—A. I was not.

Q. How long was he there?—A. A month or so.

Q. At what time was it he was there; in what month?—A. I think it must be in November.

Q. In November, 1812?—A. Yes.

Q. Were you present at the time when

Sergeant Power and Colonel Adam came, and some officers?—A. I was.

Q. Were you present when they entered the house upon that occasion?—A. I was.

Q. Will you tell us who they were that came?—A. Colonel Adam was one, Sergeant Power was another, Lieutenant Roquefeuille was another, Mr King was another.

Q. Was that the Rev. Mr. King, the clergyman.—A. Yes.

Q. Were there any more?—A. There was another one that I did not know.

Q. An officer?—A. He seemed to be an officer.

Q. Did you see them go into Mr. Moore's room?—A. No; I did not see them go in.

Q. Did you see them in the room afterwards?—A. I did.

Q. Whom did you see in the room afterwards.—A. I saw Colonel Adam and this other officer that I did not know; I could not see the rest, because they were on the other side.

Lord Ellenborough. He means the officer he has not given a name to by that.

Mr Holroyd. Yes, my Lord. Do you know where Mr. King was at this time?—A. At the time of the assault do you mean?

Q. At the time you saw those other per-

sons in the room?—A. He was on the staircase.

Q. Did you see Colonel Adam shew any thing to Mr. Moore?—A. I did.

Q. Tell us what passed?—A. I saw him shew Mr. Moore a paper, and ask him if it was his writing, or words to that purport; I do not exactly recollect the words.

Q. What then?—A. I saw no further.

Q. How happened it, that you saw no further?—A. I went into the kitchen.

Q. Did Colonel Adam come to the room door where you were?—A. No, he was standing inside the room.

Q. What made you go away into the kitchen?—A. Because I thought I had no business there.

Q. Did you return?—A. I did.

Q. How long was it before you returned?—A. It might be a quarter of an hour, or half an hour.

Q. Did you see or hear any thing upon your return; was the door open or shut?—A The door was shut upon my return.

Q. Did you hear any thing upon your return, or before your return?—A. I heard some blows given.

Q. Where were you when you heard that?—A. In the kitchen.

Q. While you were in the kitchen, before you went back, you heard some blows given?—A. Yes.

Q. How many blows might you hear?—A. I cannot tell how many.

Q. Can you say whether there were two, three, or four, or more?—A. There might be two, or three, or more.

Q. How far was the kitchen from where the blows were given?—A. About ten yards.

Q. Upon the same floor, or a different floor?—A. Upon the same floor.

Q. Did you hear any thing after you came back to the room door.—A. I heard talking.

Q. But nothing particular.—A. No.

Q. Do you remember seeing any billet on either, or both of the street doors of your master's house?—A. I do not.

Q. Any name upon either door;—A. I do not remember; except seeing Colonel Adam's name on brass, I think, on the back door.

Lord Ellenborough. On a brass plate?[55]—A. Yes, I think it was.

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[55] Having made a door through the garden, the only entrance to my house, I fixed upon it a large brass plate and knocker, which I found in a box of things sent out for my mother from England: hence must have originated this mistake.

Mr. Holroyd. Do you remember Sergeant Power coming to you for any key?—A. To me?

Q. Do you remember his coming for any key?—A. I do not remember Sergeant Power's coming for any key.

Q. Were there any soldiers stationed in Mr. Moore's house at the time this assault was given, or a little previous to it?—A. There were, about half an hour before.

A. In this house of residence?—A. Yes.

A. How long had they been stationed there?

Mr. Attorney-general. He did not say they were stationed there, I think.

Mr. Holroyd. How long had they been there?—A. Two nights, some; and one regiment, one night two days; rather, one guard staid there the night, the other was there the day this business happened?

Q. You said Captain Pearson was there in November?—Yes.

Q. Were there other officers and soldiers in your master's house of residence between that time and the time of the assault?—A. I do not remember any.

Lord Ellenborough. You do not remember any body resident there but Captain Pearson from the month of November till the period

in December when this assault was committed.—A. No, I do not.

Mr. Holroyd. Some soldiers were there the day before, and some came in that day on which the assault was committed.—A. Yes, a guard.

Q. How many were there?—A. Four I think; the first night the guard slept there.

Mr. Attorney-general. Consisting of how many men?—A. Four.

Q. Was that the night of the assault?—A. No, the night before the assault.

Mr. Holroyd. Did you say a guard was there at the time?—A. The day of the assault.

Q. Was that the same guard or another?—A. Another.

Mr. Attorney-general. A relief of the former guard?

Lord Ellenborough. There were not more than four at a time?—A. No, there were not.

Q. Where did these men sleep---the four that slept there?—A. In the little passage above.

Q. Not in any room?—A. No.

Q. Do you remember Colonel Adam and his party going up stairs after the assault?—A. Yes, I do.

Q. Into what room did they go?—A. I cannot tell; I did not follow them up, I merely saw them go up stairs.

Q. Were the guard at that time in possession of any of the rooms up stairs towards which they were going?—A. When I went out about half an hour before, they were there, but I did not see them at that time.

Q. In what room were they?—A. In a little passage leading into the captain's.

Q. Do you know the drawing-room and bed-room adjoining Mr. Moore's bed-room?—A. Yes, I do.

Q. Were any persons in possession of this room?—A. I believe the guard was put to keep possession of those rooms.

Mr. Attorney-general. Does he know that?

Mr. Holroyd. Do you know that they were in possession of those rooms?—A. No, I do not.

Q. You know your master's bed-room?—A. He had different bed-rooms at different times.

Q. Did your master give you the key of his bed-room, of that which was his bed-room at that time?—A. He did.

Q. What were you to do with that? A. To keep it.

Q. When he had given you that, did you see Colonel Adam and his party again?—A. I saw Colonel Adam again; I do not recollect any others.

Q. Where did you see him again?—A. In the room where Mr. Moore was.

Q. Was that in the room where the assault was committed?—A. Yes.

Q. Was that upon his return again into that room?—A. It was.

Q. Did you hear Colonel Adam say any thing to Mr. Moore about the key?—A. He talked about the key, but I do not remember what words he used.

Q. What was it to the best of your recollection?—To the best of my recollection, he was asking him for the key of his room.

Q. Was that the key which Mr. Moore had given you to keep?—A. It was.

Q. Did he say any thing what he would do if Mr. Moore did not give him the key?—A. I do not remember.

Q. Do you remember what Mr. Moore said about it?—A. No, I do not.

Q. What became of the key?—A. Colonel Adam snatched it out of my hand.

Q. What became of Colonel Adam when he had snatched it out of your hand?—A. He went up stairs.

Q. Was that towards the room to which the key belonged?—A. Yes, it was.

Q. That key was the key of his bed-room?—A. It was.

Q. I do not know whether you saw any thing more of Colonel Adam that day?—A. I did not.

Q. How long did Mr. Moore remain in his house after this?—A. I do not remember.

Q. Where did Mr. Moore sleep that night?—A. I believe he slept at the other house.

Q. Do you know who slept in you master's bed-room that night of which Colonel Adam had taken the key?—A. I do not.

Q. Do you know any thing about the occupation of the house---perhaps you were at the commercial house?—A. I was at the commercial house part of the time, and part of the time with Mr. Moore at Oreto.

Q. Do you know when Mr. Moore went to Oreto, or went from Alicant?—A. About the time of the assault.

Q. You say you believe he slept at the commercial house, was it the next day then?—A. The next day.

Lord Ellenborough. Was the commercial house at Oreto?

Mr. Sergeant Best. No, my Lord, in Alicant; he went to Oreto to a convent.

Lord Ellenborough. The witness speaks so indistinctly that I could not make out what he said about Oreto.

Mr Holroyd. Do you know how he came to leave Alicant?

Mr. Attorney-general. My Lord, I object to that.

Mr. Sergeant Best. There can be no objection to that question.

Lord Ellenborough. How is he to know that but by his own declaration.

Mr. Sergeant Best. I mean to shew the circumstances under which he went that there was no bed-room.[56]

Lord Ellenborough. If he can state circumstances that comes as his own knowledge and information, but he cannot state what he heard from the plaintiff.

Mr. Holroyd. From the situation of affairs in Alicant at that time, could he safely have remained there?

Mr. Attorney-general. My Lord, I must object to that question, I never heard such a one put before.

Lord Ellenborough. How could he be

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[56] That there was no bed-room—where did the learned Sergeant get this information?—Not from me most certainly.

rendered insecure, he had received a great personal insult, but that could not render him unsafe.

Mr. Sergeant Best. My learned friend takes half the question from the state of the plaintiff's premises, as well as the state of affairs; could he have carried on his trade?

Lord Ellenborough. Could he use his house for convenient purposes? that is another question.

Mr. Attorney-general. That was not the question put, that is all I say.

Lord Ellenborough. The question I thought was whether he was so impressed with terror of personal safety that he could not remain there, the question now is free from objection; could he remain there with convenience to attend to his commercial affairs?[57]

Mr. Holroyd. Could he remain there conveniently to attend to his commercial affairs? —A. How remain, I do not understand the question.

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[57] In my opinion, this question from his Lordship, completely upsets all the difficulties the learned Sergeant had started as likely to come from his Lordship, as to the admission of evidence with respect to the loss of business.

Q. From the manner in which his house was occupied?—A. He might have slept in a small room in his commercial house inside the counting house.

Q. Could he have conveniently remained in Alicant to carry on his commercial affairs? —A. No, I think not.

JAMES BUDD.

Cross-examined by Mr. Attorney-general.

Q. Why not?—A. Because he would have been looked upon as a very despisable man if he had staid there.

Q. Why?—A. Because he had been beaten in that manner.

Q. There were present at the beating Colonel Adam who ordered it, Power who obeyed the order, Lieutenant Roquefeuille, an un-named officer, and a clergyman the chaplain of the British forces?—A. He was not present at the beating.

Q. No other persons were present at the beating?—A. The clergyman was not present.

Q. Then there was one less?—A. Yes.

Q. Was there any other present?—A. Not except Mr. Moore himself.

Q. He was the person beaten?—A. Yes.

Q. How long had Mr. Moore been in England before he returned in the month of November, 1812?—A. I do not know?

Q. Had you been his clerk during that time?—A. During what time?

Q. During the time he was in England?—A. During some part of it.

Q. How many months had you been his clerk while he was in England?—A. From two to three years.

Q. Had he been in England two or three years?—A. Yes, I think he had.

Q. Before his return in November, 1812?—A. Yes.

Q. Now let us understand ourselves and be sure we are right, you had been his resident clerk at Alicant for two or three years while he was in England?—A. I had been at different places.

Q. Mr. Moore had been absent from his establishment at Alicant two or three years?—A. Yes, he had.

Q. During his absence several Spanish officers had been accommodated at his house?—A. At his mercantile house, yes.

Q. How long had he been returned before a billet was demanded for the chaplain of the

British forces at his house?—A. Two or three months.

Q. During that two or three months with the exception of Captain Pearson a wounded officer, had any military person been in his house quartered?—A. Soldiers had.

Q. How many?—A. Four.

Q. That was for two days preceding the assault?—A. Yes.

Q. To that time had any military officer been quartered in his house but Captain Pearson?—A. Not to my knowledge.

Q. You must have known if there had?—A. No, I might not.

Q. Did you reside in his house?—A. No, I did not.

Q. How many days or hours before the assault was committed did you know that quarters had been demanded for the chaplain of the British forces?—A. One or two days before, I think.

Q. The quartering of persons upon the inhabitants at that time was regulated by the Spanish authorities, the governor of the town and others?—A. It was.

Q. Mr. Moore insisted that nobody had any authority to billet any body upon him?—A. I do not know that.

Q. Did you never hear him say so to your knowledge?—A. No, I did not.

Q. He was perfectly ready to receive any body that was sent, was he?—A. I do not know, indeed.

Q. Upon your oath, do you not know that he refused to receive the chaplain?—A. Yes, I do.

Q. Upon your oath, have you not heard him say, that if any person was billeted upon him it should be by force?—A. I do not recollect that.

Q. Upon your oath, did you not hear him say that no person had a right to billet upon him, and if it was done it should be by force?—A. I do not recollect that I heard him refuse the chaplain.

Q. Mr. Moore is a British subject: he is a Briton we understand?—A. No, he is a native of Alicant I understand.

Q. We are quite mistaken all along: at that time did parties run high about the conduct of the Cortes and the conduct of the war; was there a good deal of discussion, and a division of parties, upon the authority then exercised by the Cortes during the exile and imprisonment of their sovereign?—A. I believe there was, I have heard so.

Q. Have you not heard so from Mr. Moore? —A. I may have heard it from him.

Q. And the thing occurs so probable, that I should be glad to know whether you have any doubt of the fact; there were many persons not well affected to the authority then exercised by the Cortes.—A. I have heard so.

Q. From Mr. Moore?—A. I do not know, indeed.

Q. I will let you know I know more of this than you think. Were you generally Mr. Moore's copying clerk?—A. There were two or three; I was not generally, sometimes one, sometimes another.

Q. Have you a newspaper at Alicant called the Diario?—Yes.

Q. Do you know from Mr. Moore---now mark my questions—that he was a considerable writer in that newspaper of Alicant?—A. I have seen several things from him, several things signed by him, or words spoken by him.

Q. In the newspaper of Alicant?—A. Yes.

Q. Do you know from him, either by his shewing you his compositions, or by verbal communications from him, that he wrote a great deal in the newspaper of Alicant?

Lord Ellenborough. Do you know whether

he was a writer[58] in that paper?—A. I have seen several things in the newspapers that spoke of him.

Mr. Attorney-general. Papers put in by him?—A. Signed by him and others that spoke of him.

Q. You do not mean papers that spoke of him by other people?—Yes.

Mr. Sergeant Best. I submit,[59] that this gentleman cannot be prejudiced by any papers, if it is supposed that there are any reflecting upon Colonel Adam.

Mr. Attorney-general. I say nothing about reflections.

Lord Ellenborough. I do not know how

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[58] His Lordship by a writer in a paper did not certainly mean literally a person who wrote any thing that was printed in that paper, although it should be advertising the hours at which his counting-house was open, or answering any impertinent observations; of this more hereafter.

[59] I submit, that no papers could possibly be produced that could prejudice me, and that I always expressed my wish that every justification might be probed to the bottom, provided no unfair legal advantage was allowed to be taken; but does not this very objection lead to think there could possibly be some grounds for the charge?

it may shape itself,[60] if he has seen any thing signed by this gentleman, and this gentleman adopts the contents, it may be inducement to something that will be evidence, but by itself proves nothing.

Mr. Attorney-general. It might have been translations of the Alcoran for any thing I have asked for the present; but do you not know that he was a considerable publisher in the Spanish newspaper called the Diario?—A. He wrote several articles in the newspaper, I believe.

Q. Do you know from him that he wrote an article upon the subject of deserters from the British army, who might be heard of at his house after the guard were stationed at his house?—A. In the public newspaper do you mean?

Q. You know all about it I see; do you know whether he wrote any thing about that?

Mr. Sergeant Best. I submit to your Lordship that is getting at the contents of the paper by parol.

Mr. Attorney-general. So I may if he spoke it.

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[60] I understand every thing of this kind in way of justification should have been put on the record.

Lord Ellenborough. It does not signify whether it was published in the paper, the Attorney-general asks what he said himself.

Mr. Attorney-general. Do you not know from him that he published, in order to expose to ridicule, an ironical advertisement,[61] a parody on an advertisement of the Deputy Adjutant-general on the subject of bringing in British deserters, stating that they might be found at his house?

Lord Ellenborough. You make your question so large, that it is impossible for the witness to answer to it—ironical and so on.

Mr. Attorney-general. That is true.

Lord Ellenborough. You must couch it in terms which one can take down.

Mr. Attorney-general. Certainly, my Lord. Do you not know that he published an advertisement about British deserters?—A. No, I do not.

Q. You never heard that from him?—A. No.

Q. Nor one ridiculing an advertisement of Colonel Adam about British deserters?—A. No, I never saw it.

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[61] This question, if the learned Gentleman was acquainted with the truth, is of the same description as the one put to the Sergeant about "Quarters by force for ever?"

Q. I do not ask whether you ever saw it, but whether you heard it from him?—A. He wrote about the British deserters.

Q. Did he not tell you about them?

Mr. Sergeant Best. I must object[62] to this what he wrote.

Mr. Attorney-general. I ask whether he told him he had written?

Lord Ellenborough. We are now taking it as his oral declaration.

Mr. Attorney-general. My question to you is this, did he not tell you that he wrote an advertisement about British deserters?—A. An advertisement, no.

Lord Ellenborough. A publication?[63]—A. A letter of some sort or other.

Q. Did you understand from him that that letter was published in the paper?—No, I do not recollect that it was.

Lord Ellenborough. What was done with this?

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[62] Why object? The learned Sergeant had agreed there was a paper—he had heard a false description of it, for he had a translation of it in his brief; it therefore appears to me that it was important to have the truth out if possible, since he had not thought proper to state it himself.

[63] It was a sealed letter sent to an individual.

Mr. Attorney-general. I must object to my learned Friend making a running comment upon such a case as this.

Mr. Sergeant Best. I am anxious to see the paper.

Mr. Attorney-general. Then you can produce it?[64]—A. I understand it was sent to the Adjutant-general's office.

Lord Ellenborough. Before the assault?—Yes.

Mr. Attorney-general. How long before?—A. That day, or two or three days before.

Q. Was it not after the guard came into his house and remained in the passage.—A. Yes, it was.

Q. Now I ask you, and attend to my question, did he not represent that he had stated in that paper which he had sent to Colonel Adam's office that British deserters, for whom the Colonel had advertised, might be found at his quarters, in Mr. Moore's house?—A. I will thank you to put the question again, as I do not understand it.

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[64] I wish the learned Sergeant had produced it; but I was informed by my legal adviser that it could not legally be read on my part when I urged that it should; as he did not state so, I must presume my information was incorrect.

Q. Did he not tell you that in that paper which he had sent to the Adjutant-general's office he had represented that deserters who were advertised for by the Adjutant-general might be found in his house placed there by the Adjutant-general?—A. I remember his talking of deserters, but I do not recollect what the words were.

Q. Did he not state that he claimed a reward for apprehending the persons advertised as deserters?

Lord Ellenborough. Did he say he represented the guard sent to his house as deserters?

Mr. Attorney-general. And that he claimed the reward for apprehending them, did he not state that the soldiers in his house were the soldiers for whom Captain Campbell had advertised?—A. I do not know.

Q. Upon your oath do you not know that that was the paper shewn to him by Colonel Adam, and which he acknowledged to be his hand-writing?

Mr. Sergeant Best. Do you know that from his declaration?

Mr. Attorney-general. To interpose in this way upon the cross-examination I think is not correct.

Lord Ellenborough. Unless it was read at the time he could not know what it was.

Mr. Sergeant Best. And it has been stated that it was not read.

Mr. Attorney-general. Not by this witness?

Mr. Sergeant Best. Yes, it has.

Mr. Attorney-general. Then I have a right to mend his memory[65] and his veracity too; I have no objection to this course on the part of my learned Friend, if he thinks proper to adopt it.

Mr. Sergeant Best. My Lord, I do conceive this is most irregular.

Lord Ellenborough. Observations upon the conduct of the cause are improper; if there is any thing irregular, the objection should be made to the judge and he will set it right.

Mr. Attorney-general. In such a case as this a little allowance must be made.

Lord Ellenborough. There is no difference in cases, it is improper in any case.

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[65] I should have been much obliged to the learned Gentleman if he had exerted "his right and mended his memory;" his veracity would then have been more conspicuous than would answer the learned Gentleman's purpose.

Mr. Attorney-general. Will you swear you did not see the paper he sent to Adjutant-general's office?—A. I cannot say that I did.

Q. Will you swear you did not copy that?—A. I copied many papers I know.

Lord Ellenborough. You leave an impression on the minds of the jury[66] that you did copy it; state whether you did or not?—A. I cannot say, indeed, whether I did or not.

Mr. Attorney-general. Will you swear you believe you did not copy it?—A. I will.

Q. You will swear that you believe you did not copy a paper about deserters?—A. I believe I did not.

Lord Ellenborough. Be upon your guard.

Mr. Attorney-general. If you did not, who did?[67]—A. I do not know.

Q. Do you know whether it was sent in his hand-writing, or another hand-writing?—A. I do not remember.

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[66] If his memory was equal to his veracity this could not be the case, for I wrote the letter, gave it to a Spanish clerk to copy, and immediately after closed it and sent it by Carlos Botarelli to head-quarters, and not to the Adjutant-general's office, as the direction of the letter can at any time testify.

[67] Dr. Manuel Javaloyes, a Spanish clerk, copied it into the regular copy-book of Spanish letters.

Q. Do you not know from him at the time of the assault, Colonel Adam brought that paper which he told you he was going to send there about deserters, and asked him whether it was his writing?—A. He brought a paper and asked him whether it was his writing.

Q. Do you not know from Mr. Moore that the paper he brought was that which he had sent about the deserters?—A. I do not.

Q. What paper did he tell you Colonel Adam did bring and show to him, and ask whether it was his writing?—A. I do not remember.

Lord Ellenborough. Did Mr. Moore ever speak to you about that paper after it was brought?—A. No further than asking if I had seen any thing of it.[68]

Mr. Attorney-general. What did he ask you if you had seen?—A. What I had seen of the business.

Q. What did he ask you about the business? if you had seen Colonel Adam, do what with the paper?—A. If I had seen him do any thing with the paper, and I told him I had seen Colonel Adam in the act of pre-

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[68] This was subsequently to his coming to England to be a witness on the trial.

senting the paper to him, and ask if it was his writing.

Q. What answer did you make to that?—A. I told him I had.

Q. What paper did he tell you Colonel Adam had presented?—A. He did not tell me, I told him.

Q. You knew the paper again?—A. No, I told him I saw Colonel Adam present the paper to him.

Q. Upon your oath was it not the very paper that he had before told you he had written, and sent to the Adjutant's office about deserters?—A. How am I to know that.

Lord Ellenborough. By his saying so, would be one way?—A. He did not mention what paper it was.

Mr. Attorney-general. Had he to your knowledge sent more than one paper in his own hand-writing to the Adjutant's office?—A. Not to my knowledge.

Q. And he had told you that within a few hours, and after the guard came, he did send such a paper?—A. Yes.

Q. Did you carry it?—A. I do not remember whether I took it.

Q. We must come to a little better understanding about that, recollect yourself, for

you have been talking this over, we understand that he asked you whether you saw the paper presented; upon your oath did he not dispatch you with this paper to the Adjutant's office?—A. I will swear I do not remember, different people carried papers.

Q. Did you go to the Adjutant's office?—A. Not that I know of, I went to Colonel Adam's lodgings but not to the office, it was in the same house I understand with the Adjutant-general's office.

Q. How long before the assault had you gone to Colonel Adam's lodgings, how many hours?—A. It might be some days.

Q. Do you mean to swear it was?—A. Yes.

Q. Did you carry any paper there?—A. I have carried two or three.

Q. Upon your oath will you venture to swear you did not carry that paper which you represent to be about the British deserters who might be found at his house?—A. I think I did not.

Q. What makes you think you did not? A. Because I do not know that I carried any paper to the Adjutant-general's office.

Q. Will you swear you did not carry that paper to Colonel Adam's lodgings in the same house in which the Adjutant-general's office was?—A. I carried several papers.

Q. Will you swear you did not carry that same identical paper about British deserters, which you had talked to Moore about before? —A. I will swear I believe I do not know.

Lord Ellenborough. You must have had a good deal of conversation[69] with Mr. Moore on the subject while this was passing, and having communicated with him you must be pretty well conscious of the general contents of the paper you carried?—A. I do not know who carried it, sometimes one clerk carried, and sometimes another; I do not know who carried this particular paper.

Q. What particular business had you with the Adjutant-general besides; was there any business on which you communicated with

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[69] Not one syllable of conversation on the subject, nor did I know he was acquainted with the assault on the 18th, when I took him with me to Oreto the next day, for I did not at the time say a word on the subject to any body, nor for months afterwards. It was since my arrival in England, and when I found doubts were entertained whether the persons present would tell the truth unless checked by other witnesses, that I wrote out to Alicant to enquire whether he knew any thing of what had passed. I do not suppose his Lordship would "talk over" his political sentiments or his judicial charges with a boy of 17 years of age.

him?—A. I—

Mr. Attorney-general. You or your house, had your house or Mr. Moore any business to transact with the Adjutant-general's office, except the disputes[70] about quartering the troops?—A. No, I believe not.

Q. Did you ever see in Mr. Moore's handwriting any thing written like "vive la force?"—A. No.[71]

Q. Did you ever see such a paper?—A. I do not recollect seeing it.

Q. Will you swear you did not by his direction write one?—A. I do not think I did.

Q. Have you not seen such a paper?—A. I do not recollect having seen it.

Q. While Mr. Moore was absent previous to the month of November, was there many officers accommodated in his house or few?—A. There had been several officers at both houses.

Q. For a considerable length of time together?—A. I cannot say, at one house I can say, but not for both.

Q. For how many months together at one house?—A. Four or five months together.[72]

[70] I had no dispute about quartering the troops with any one, it was not the Adjutant-general's business according to his own declaration to me.

[71] Nor any body else either.

[72] And at the other for two years.

Q. At which house?—A. The mercantile house.

Q. How many officers, five or six?—A. Three or four and five or six.

Q. Making it their head-quarters?—A. They were billeted there.

Q. What did Mr. Moore's family consist of at the time of the assault, the family[73] lived in the residence house while Mr. Moore was absent in England?—A. Yes.

Q. What did his family consist of in the residence house?—A. Four or five, the maid servants.

Q. Was there any parlour company, any body who occupied the best beds?—A. No.

Q. And you had three or four beds and one in the room within the other?—A. Yes.

Q. Then those beds with the exceptions of Mr. Moore's one were unoccupied at the time the billet came for Mr. King the chaplain of the forces?—A. Where were the servants to sleep?

Q. Do you mean to say that the maid servants slept in the best beds?—A. There was only one good bed.[74]

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[73] General Roche's family.

[74] There had been one good bed brought from my mercantile house for Captain Pearson, which I subsequently gave to the servants. The bedstead which

Q. Were the other bed-rooms occupied at the time that the application was made to let in the chaplain of the British forces upon your house?—A. There were two occupied.

Q. Two out of the five or six?—A. Five or six bed-rooms! I do not think I have said five or six.

Lord Ellenborough. He has said there were three altogether.

Mr. Attorney-general. Then there was one the chaplain might have had without turning Mr. Moore out of his own bed-room? —A. There was none put up, they might have put one up.

Q. I have not had either the glory or the fatigues of a campaign, but upon these occasions officers are not very nice about down beds, I suppose?

Lord Ellenborough. Had there been a bed in that room, and was that bed removed? —A. Which room, the little room.

Mr. Attorney-general. Upon your oath were not all the bed-rooms furnished at the time he returned from Great Britain?— A. No, they were not.

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had been expressly fixed up for him was repacked as before, General Roche and all his dependents had their own beds.

Lord Ellenborough. When were they unfurnished?—A. I never saw them furnished.

Mr. Attorney-general. The Spanish officer and Captain Pearson had contrived to be pretty well accommodated?—A. The Spanish officer was General Roche.

Q. And his wife?—A. No, he had no wife, and his brother-in-law was with him.

Q. Where were they?—A. In the residence house.

Lord Ellenborough. Were they there at the time of the assault?—A. Oh, no.

Mr. Attorney-general. They had quitted before Mr. Moore arrived?—A. They quitted on Mr. Moore's arrival from England.

Lord Ellenborough. Who were in the house at the time of the assault?—A. Nobody but Mr. Moore and two maid servants and a little boy.

Mr. Attorney-general. Did the maid servants usually sleep in those best beds?—A. There were no best beds but one.

Q. That Mr. Moore had?—A. Yes.

Q. There was a room into which he (Mr. King) might have brought his camp equipage, his cot, or his palliasse?—A. Yes.

Q. There was a room that had been a bed-

room, but was at that time quite unoccupied?[75]—A. Yes.

Q. At the time of this assault were the enemy supposed to be in great force very near to Alicant?—A. I cannot say, they were moving from one day to the other, sometimes they came close, sometimes they went further.

Q. I suppose that is not an uncommon thing; were they understood to be in great force in your near neighbourhood?—A. I do not know whether they were in great force, I should suppose them to be.

Q. Was it supposed so there?—A. Yes.

Q. Were they soon expected to come into Alicant unless the British kept them back?—A. I do not know that.

Q. You were quite at your ease and did not expect they would come at all?—A. They might have come.

Q. Some of you might have been shorter by the head but for the British; were there many resident British merchants at Alicant at the time these quarters were demanded for the British chaplain?—A. There were some.

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[75] And the four soldiers had military possession of it, and the drawing-room.

Q. How many do you think?—A. From eight to ten.

'Q. Now I put it to you, at that period do you believe there was a single house in Alicant either inhabited by British or by Spaniards that had not persons billeted upon them by the Spanish authorities?[76]—A. I do not know.

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[76] Those who were of a "condescending disposition" were not much incommoded, at least I visited eight or ten after my arrival, without perceiving any sign of lodgers, though it is possible one or other might have a bed-room occupied by some friend or acquaintance. I sent a letter I brought from Cadiz to one of these "English merchant's" houses, but as my messenger enquired for the officers lodged or billeted there, he was indignantly told there was no "Alojado" there. Mr. Roselt had been a French merchant, with a large tri-coloured cockade till the murder of the French merchants at Valencia, when he thought it prudent to go to Gibraltar, from whence he returned an English merchant in a British man of war. It is true that he was of a remarkably "condescending disposition," and that Mr. Tupper lived with him, who being one of the two consuls representing his Britannic Majesty at Alicant, of course protected him, his house, and all his friends and acquaintance. Mr. Athy the other consul, who had been for the last 12 years employed in my counting-house, had a larger house than mine and no one

Q. Have you any reason to believe they were not billeted universally through the town, and in many of the houses in great numbers?—A. I have heard that Mr. Ryan's house was the least occupied.

Lord Ellenborough. Then the others were occupied?—A. I do not know, indeed.

Lord Ellenborough. That imports that they were all occupied when you say that that was least occupied.

Mr. Attorney-general. Who was Mr. Ryan?[77]—A. He was a merchant.

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billeted upon him. Lord Frederick Bentinck, (to whom he told me that he had expressed his surprise at the conduct observed by English officers at Alicant, which he knew to be so contrary to the laws and usages of their own country,) had been at his house as a friend, but not as an "Alojado." While I remained at Alicant I believe he had only the Admiral's horse.

[77] Mr. Richard Ryan is a gentleman who had been employed in my counting-house, to whom Mr. Strange on leaving Alicant paid his salary, and allowance for house expenses to the 30th June, 1812. He however immediately set up as a merchant, and took my principal Spanish clerk into his employ. He was in the December of the same year in possession of one of the largest houses in the town, at one time the Governor's. I do not know what persons he had billeted upon him, but I should think not many,

Q. How many had he?—A. He had one.

Mr. Sergeant Best. He does not know this.

Mr. Attorney-general. I do not ask the particulars, but this must be matter of notoriety.

Lord Ellenborough. It is very natural to repel the aggravation, because this would be a malicious selection, if this gentleman was picked out to have persons billeted upon him; if this was a common distribution of the burthen, it would repel the inference arising from such an act.

Mr. Sergeant Best. I object not to the question, but to the answer, that Ryan had less than the rest.

Lord Ellenborough. We cannot expect evidence of his going into a house and knowing how many each had, but we must take it according to the report of the party.

Mr. Attorney-general. Have you reason

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as he was notoriously of a most "condescending disposition." I understand that Sir William Clinton on resigning his command, instead of sending to the town-house for a billet on Mr. Ryan's house, to be enforced at the point of the bayonet, preferred sending a civil request to him for a bed-room at his house, which was granted.

to believe from your knowledge and observation that a great number of the inhabitants of Alicant had persons billeted upon them?—A. Yes.

Q. Have you reason to believe that every one had some officers billeted upon them?—A. I have no reason to believe the contrary.

Q. Then you believe the fact?—A. Yes.

Q. Could they have been sustained there being a great number, without their having been billeted upon all the inhabitants?—A. I think they could not.

JAMES BUDD.

Re-examined by Mr. Holroyd.

Q. The billet which was brought for Mr. King, do you know whether it was signed by the Spanish authorities or not?—A. I have heard say it was not, but I do not know whether it was or not.

Lord Ellenborough. We have not it in evidence that there was something tendered as a written billet.

Mr. Holroyd. He says that there had been a billet.

Lord Ellenborough. But your question as-

sumes there had been a written billet before that time tendered; it is only the difference between *the* and *a*.

Mr. Holroyd. Did Mr. Moore or not object that the reason he would not reeeive Mr. King was, that the billet was not signed by the Spanish authorities?—A. I have heard him say so.

Q. Did he say so at the time?—A. He objected to receive him, but I do not know the reason.

Lord Ellenborough. Did he object because it was not an effective order of billet, or did he object because he would not receive a person who was regularly billeted?—A. I do not know indeed.[78]

Mr. Holroyd. There was only one best bed, and that you say Mr. Moore himself had?—A. Yes.

Q. You were mentioning that there were two or three clerks—was it not a very considerable establishment Mr. Moore kept?—A. It was. I have heard so.

Q. You say he had been in England two or three years before?—A. I left him in England when I went out.

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[78] If he had had any conversations with me, he must have known it—he never saw me speak to Mr. King.

Q. During that time, had he not a partner who managed the concern in Alicant?—A. I understand he had.

Q. Do you know when that partnership was dissolved?

Mr. Attorney-general. I must object to that.

Lord Ellenborough. Do you know that he had a partner?—A. I understand Mr. Strange was his partner.

Mr. Holroyd. You know Mr. Strange very well?—A. Yes.

Q. Do you not know that he was his partner previous to Mr. Moore's return?—A. I understood so.

Q. Did he not act as partner while you were there?—A. I understood so.

Q. Did he act as such after Mr. Moore's return?—A. No.

Lord Ellenborough. Did you return with Mr. Moore?—No, I went out while Mr. Moore was in this country.

Q. Who acted in the control and management of Mr. Moore's business during his absence?—A. Mr. Strange.

Mr. Holroyd. Do you know when Mr. Strange ceased to act for him either as a partner or assistant in his house?—A. I believe when Mr. Moore came out.

Q. Mr. Strange did not act for him after his return, did he?—A. Not to my knowledge.

Q. Could he have managed the business without your knowledge during the time you were acting as clerk?—A. No, I think not.

Mr. Attorney-general. I do not know how this arises out of my cross-examination.

Mr. Serjeant Best. I will tell you; because you asked whether Mr. Moore was not long absent, and I am accounting for how he could be so long absent.

Mr. Attorney-general. And I do not object to that.

Lord Ellenborough. He says he was upon the spot at the time, and that he has the means of knowing that Mr. Strange acted as the partner.

Mr. Holroyd. Do you not know that the partnership was dissolved?

Mr. Attorney-general. How can my learned Friend put such a question as that?

Mr. Holroyd. Was Mr. Moore the only person who acted in the business after his return to Alicant?—A. I understood Mr. Moore—

Q. No other person acted in the management of it?—A. No, I believe not.

Q. Did any person, in point of fact, act in the management of the business after Mr. Moore's return?—A. They might both of them.

Q. Did Mr. Strange act after that time?—A. I do not recollect that he did.

AUSTIN MORGAN sworn.

Examined by Mr. Brougham.

Q. Were not you a clerk with the Plaintiff?—A. Yes.

Q. At his house at Alicant?—A. Yes.

Q. How long have you been in his employment?—A. Fifteen years.

Q. There?—A. Yes, in Alicant.

Q. Were you with him in the month of December, 1812?—A. Yes, I was.

Q. Previous to that time, we understand Mr. Moore had been for some time in this country?—A. He had.

Q. During his absence, were you in Alicant in his house?—A. Yes.

Q. Who conducted the business of the house in his absence?—A. Mr. Strange.

Q. His partner?—A. Yes.

Q. Do you recollect being with Mr. Moore in his company on the 16th of December, 1812?—A. I do.

Q. Do you know the Defendant, Colonel Adam?—A. I did know him.

Q. He was then in Alicant we understand?—A. Yes.

Q. When you were with Mr. Moore on that day, did Colonel Adam come to him?—A. He did.

Q. What did he say to Mr. Moore in your presence?—A. Mr. Moore was with the workmen there, and he addressed Mr. Moore in a very high tone of voice, and said that he had forced his way into his house?

Lord Ellenborough. That he, Mr. Moore, had forced his way into his house?—A. No, Colonel Adam.

Q. He said I have forced my way into your house?—A. Yes.

Mr. Brougham. What more did he say?—A. Afterwards he threatened Mr. Moore with punishment if he put any thing into the Diario respecting him, Colonel Adam?

Q. Endeavour to recollect as nearly as you can the words Colonel Adam used upon that occasion?—A. To the best of my recollection he said he would inflict personal chastisement upon Mr. Moore if he put any thing into the Diario respecting him.

Q. Try to recollect whether he mentioned what kind of personal chastisement he would

inflict upon him?—A. I do not recollect the kind of chastisement exactly, but he mentioned that he would inflict personal chastisement upon him if he put any thing into the Diario respecting him.

Q. Have you any recollection of the kind of personal chastisement he talked of?—A. No, I have not.

Q. At which of the two houses did this conversation take place?—A. At the mercantile house.

Lord Ellenborough. This conversation was in the mercantile house?—A. Yes, it was.

Mr. Brougham. This was on the 16th of December, two days before the assault?—A. It was a little before the assault.

Q. Do you know any thing of soldiers or officers who were billeted in Mr. Moore's houses at that time?—A. In the mercantile house there were four---in short, all the house was occupied by military men at that time---the mercantile house.

Lord Ellenborough. Were there more than four soldiers?—A. There were three officers and a lady at the time---a military lady.[79]

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[79] This military lady came from Madrid to Alicant under the escort of a priest, sent by her son from

Q. You mean a lady belonging to one of the officers?—A. Belonging to a General.

Mr. Brougham. Besides the military officers and the lady, were there any other soldiers at that time?—A. Their servants; no others.

Q. How many of their servants were with them at that time?—A. I believe there might be four or five soldiers.

Q. Were there any other military females?—A. No.

Q. The house being so entirely occupied at that time?—A. The best part of it was occupied by those four persons.

Q. And the other part of it was occupied by the soldiers?—A. Yes.

Q. Was it by virtue of the Spanish authorities that these billets were made upon the houses?—A. It was.

Catalonia, where he had a command. Why she left Madrid I cannot tell; for upon one occasion that I did myself the honour of taking tea with her, I found her expatiating to Mrs. Murray, the Admiral's purser's lady, upon the beauty and amiableness of King Joseph; but come she did, and recommended to Mr. Richard Ryan, who, by means of his "condescending disposition," procured her a billet on my mercantile house during Mr. Strange's absence; and she took possession of three or four rooms on the principal floor, where I believe she is still.

Lord Ellenborough. Did you see the billets [80]—A. I did see the billets.

Mr. Brougham. Was it by the Spanish authorities the persons were billeted upon Mr. Moore and other persons?—A. It was.

Q. How soon after the assault on the 18th did Mr. Moore quit Alicant?—A. Very soon after.

Q. Can you tell exactly how soon after?—A. No, I believe it was in a day or two after, one or two days.

Q. Do you know where Mr. Moore slept the night of the 18th?—A. I do not recollect where he slept that night.

Q. After the assault, and the occupation of his house upon the assault, could Mr. Moore have remained, and carried on his mercantile business there as before.—A. I do not think he could have remained.

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[80] I had a couple of these billets in my pocket; the one given me by Lieutenant Judge, and another left at my mercantile house by two Sicilian officers, a few days before Mr. King presented himself. I would have engaged for a dozen dollars to have had a dozen of these billets presented at the same house on the same day. I was told they could not be made the subject of discussion, as no justification was put upon the record.

Lord Ellenborough. What. was the reason? A. Because, to carry on his business, he required the use of his house.

Q. Do you mean his commercial house?—A. I do.

Q. That was the house the use of which he wanted for that purpose?—A. Yes, I believe so.

Lord Ellenborough. General Adam is not charged with the interruption of the commercial house; it is for the assault in the residence.

Mr. Brougham. I take it, my Lord, to shew the situation of his houses—You say you have been fifteen years in employ by his house at Alicant?—A. I have been.

Q. After this affair happened, would it have been possible for Mr. Moore to have continued to carry on his commercial affairs? —A. I think he would not have been able with any success.

Lord Ellenborough. Why?

Mr. Brougham. I will ask him.

Lord Ellenborough. The allegation I see is, that he was compelled, "and compelled the said Moore then being a merchant carrying on business to quit and leave Alicant," from which I knowing nothing of it but by

the record had supposed there had been an order for him to quit, and that he had been put under a sort of military execution, and turned out of the town: but one witness says he quitted because he was disgraced; some things may have enough in themselves, but by endeavouring to tack on[81] that which does not belong to them, that which is substantial may be injured.

Mr. Sergeant Best. Perhaps I may give offence in some quarters, but I have always felt that—[82]

Mr. Brougham. I will put one question: You having been there previously, and at that time, and knowing the place, could a person have remained in Alicant after what

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[81] The fact being that I lost my establishment through the Defendant's conduct, I cannot see how it can be said to be tacked on.

[82] Why then not throw up his brief? Would not this have been more manly and more honourable than such a declaration at such a time. For my part, I can assure the learned Sergeant, that if *unfortunately* he had got my fit of the gout, I would not have spared him my bottle of Eau Medicinale to put him on his legs for my sake. I am told this declaration of the learned Sergeant's is without example, and astonished his brethren of the law.

had happened to Mr. Moore?—A. I would not have remained after such a thing had happened to me.

Lord Ellenborough. That is, you would not have remained in any place after you had been beaten?—A. I would not.

Q. Therefore if you had been *domiciled* in London, and a man had beaten you there, you would have gone to *Amsterdam* or somewhere else and not remained there?—A. No, not from London, but it is not alone from the beating.

Lord Ellenborough. This is too extravagant, it is carrying it too far.

Mr. Brougham. Before putting this question, I will just submit it to your Lordship, whether after what had happened in the situation of affairs there, the house could have negotiated bills in the usual course of transactions.

Lord Ellenborough. If you will ask him whether from what happened from Colonel Adam any interruption of his commercial business arose, perhaps that will be a proper question.

Mr Brougham. I will not press it, my Lord.[83]

[83] I do not know why Mr. Brougham so readily agreed not to press this question in the form Lord

Mr. Attorney-general. I shall not ask him any questions.

Mr. PATRICK STRANGE, sworn.

Examined by Mr. Sergeant Best.

Q. I believe you have been partner with Mr. Moore?—A. Yes.

Q. When did your partnership cease?—A. In the year 1812.

Q. I believe that was the time at which Mr. Moore came out from London to Alicant?—A. Yes.

Q. Had it ceased before the transaction spoken to by the other witnesses?—A. Yes, in the month of June.

Q. Had you left Alicant?—A. I was not in Alicant at the time the assault took place.

Q. Was your residence in Alicant at the time?—A. Yes.

Q. How long after was it before you were there?—A. I believe it was in the month of January I came there, (after Mr. Moore had left Alicant) on his concerns.

Ellenborough put it. He perhaps heard me tell my solicitor that the witness was not competent to answer the question he was putting about bills.

Lord Ellenborough. You mean January, 1813?—A. Yes.

Mr. Sergeant Best. You know the state of Alicant at that time?—A. Pretty well.

Q. Do you know the state of Mr. Moore's house at that time?—A. Yes, I have a tolerable idea of it.

Q. From what you know of the state of his house, and of Alicant at that time, in your opinion could he have continued there after the 18th of December?—A. Not with any advantage to his house, I think.

Q. To what extent was he carrying on business, what were his profits per annum?—A. Upon the average, for the last six years, it was upwards of 7000l. a-year.

Mr. Patrick Strange.

Cross-examined by Mr. Attorney-general.

Q. Why do you think after the 18th of December, for I will put that for Mr. Moore, as I perceive[84] he is anxious his

[84] I thought the learned Gentleman's powers of perception might be great indeed, but all wonder ceased when I found they enabled him to perceive the "illustrious descendant of the Adelphi," transported into my presence in a litter, and even car-

counsel should do, that he could not carry on his trade to advantage?—A. Because his character as a tradesman must have suffered considerably.

Q. By what?—A. By his suffering himself to be beaten, and by its being supposed his character deserved it, by his being beaten and treated not like a gentleman.

Q. Then it is your opinion that if any merchant in London had had a dispute with another, and unfortunately upon the Exchange of London blows should pass, the person to whom these blows were given, must break up his establishment in Great Britain, and go somewhere else?—A. I am not master of the customs in England, I have not been in this country.

Q. I hope you think that at least our commercial honour stands as high here as in Spain?—A. No, I should think not, because you might obtain justice here.

Q. Then in proportion as a person cannot obtain justice the ignominy is the greater?—A. No, but he could have cleared up the matter to the satisfaction of his friends in London.

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tain circumstances attendant on that pathetic scene which should have produced I know not what result. "Damn the Alcade of Xixona."

Q. What did you suppose he had been beaten for?—A. It must be supposed he had committed some heinous crime.

Q. Some personal offence to a gentleman, or something which broke in upon the discipline of the army?—A. It might not be known what.

Q. Upon your oath do you not know he had sent an insulting letter to Colonel Adam upon the subject of British deserters, for whom the Colonel had advertised, stating that they might be found at his house, and claiming the reward for them?—A. He never communicated any thing to me upon his private business.

Q. Do you mean to say that he had never before the 18th day of December communicated to you that in consequence, now remark the expression, I select it from all others that could be used; that in consequence of the times being unhinged,[85] he intended to dis-

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[85] "Times unhinged." I hope the learned Gentleman has read the whole of my letter to another client of his in which this expression occurs. It seems to have struck him as it did me the first time I heard it, which was on the 19th of April, 1813, when I went on board the Malta to hand Captain Niglefield a bill I had taken from him, and which was sent back

continue his mercantile transactions at Alicant?—A. No, he proposed to me in consequence of the circumstances that were occurring, instead of a new partnership, we had agreed upon from the year 1812, to take the whole upon his own account in consequence of our being likely to get into disputes.

Q. When was that?—A. After he came out from England.

Q. This was before the assault of which he complains?—A. Oh, yes.

Q. He agreed to take the whole of the business upon himself on account of the disputes in which he was embarked?—A. As he was likely to get into litigious disputes.

Q. On what subject were those litigious disputes into which he expected to get?—A. About the protection of himself and his property from injustice and malpractices.

Lord Ellenborough. When was this communication; I thought it had been contemporary with his actual arrival which was in the month of October?—A. The communication of what?

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from London protested for non-payment. The Purser, Mr. Archibald Murray told me the times were unhinged at Alicant, as expressive of his opinion of what was passing there.

Lord Ellenborough. His determination to form no new partnerships in consequence of some litigious disputes?—A. That was some short time after his arrival in Alicant.

Q. And before the assault?—A. Yes.

Mr. Attorney-general. He stood up for the constitution?—A. No, he wished to have justice done him according to the constitution.

Q. At that time the authority was exercised by the Cortes?—A. Yes.

Q. And he saw he should be involved in litigation, he being attached to the constitution as it then existed?—A. He saw that things were carried on in an improper manner and that justice was not administered equally or fairly.

Q. If justice is not administered fairly it is not administered at all?—A. Perhaps so.

Lord Ellenborough. Against whom was the complaint, against those having the power of government, or whom?—A. Against the authorities.

Q. Against the Cortes?—A. Against the authorities who had seized all his fixed property, and put the soldiers and so on, and not putting the burthen equally.

Mr. Attorney-general. By having seized his fixed property?—A. Not seized his fixed

property, but taken possession of his property.

Q. And putting soldiers, and not dividing the burthen equally?—A. Yes.

Q. There had been during his absence a considerable billeting of persons upon his property?—A. Yes, there had been.

Q. Of which he very much complained?—A. He complained that justice was not done him.

Q. After he came, for some weeks I believe there was nobody quartered in his house at all, except a Captain Pearson?—A. That I do not know; I retired to the neighbourhood.

Q. Do you happen to know, as he was a man of talent, whether, having this as he thought, and probably you think, well-grounded complaint against the authorities that were, he wrote a considerable deal upon that subject?—A. Not from him; he did not convey his ideas to any body, at least not to me, that is his general character.

Q. He did to you?—A. No, not upon his writing.

Q. But his sentiments upon this subject?—A. That was upon the new partnership---he gave me his reasons why he did not enter into it.

Q. His objection was that the authorities did not administer justice?—A. He said there was no use in persevering against the mal-practices, they were so general.

Lord Ellenborough. Then he had come to a determination to withdraw from his commercial concerns at Alicant, in consequence of mal-practices that existed?—No, that he would take them entirely upon himself?

Q. And exclude you?—A. Yes, because we did not exactly agree in our manner of thinking; he thought I was of too condescending a disposition, that is that I submitted too readily.

Mr. Attorney-general. And he was determined to act up to his sentiments?—A. Not to his sentiments, but to the letter of the law.

Q. And to resist those malversations which he thought he saw?—A. Yes, according to the letter of the law.

Q. And one of the particular malversations he observed upon was the billeting of soldiers?—A. He did not communicate that to me.

Q. You have told me so?—A. Then I correct myself.

Lord Ellenborough. It is the only particular you specified, in which he complained of the malversation of authority—that he

complained of the authorities having taken possession of *his property by billeting soldiers*, and not laying the burthen equally?—A. Yes, that was the reason he gave me for taking the partnership upon himself.

Mr. Attorney-general. With a determination to act up to his principles, whatever might be the consequence?—A. He did not give me his reason, he merely expressed his wish.

Lord Ellenborough. He thought you were of too mild[86] and condescending a disposition?—A. *He did not enter into it with me*[87]—he was led to it by a governor who had been

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[86] The gratuitous addition of *mild* proves that his Lordship is not aware of the meaning of a condescending disposition under a despotic government. In good wholesome English it means a disposition to bribe the different authorities, with their wives, daughters, or mistresses, secretaries, clerks, or servants.

[87] *He did not enter into it with me.*—It is evident from this and several other answers of this witness, that he did not understand the meaning of the questions put to him; and it is equally evident the noble Lord on the Bench did not understand the meaning of the witness in his answers. I beg leave to refer to note E. in the Appendix.

lately sent there by the Cortes to put the constitution in force.

Mr. Attorney-general. What did that lead him to?—A. He thought he would have got justice by going to law.

Q. By the interposition of this new Governor?—A. This is what I suppose; he never told me—things which did not concern me he did not tell me.

Mr. Patrick Strange.

Re-examined by Mr. Sergeant Best.

Q. The Cortes had been very recently[88] proclaimed?—A. Very recently before his arrival they had sent a new Governor, and he declared he was sent there to establish the constitution, and that he was resolved to do so.

Q. Mr. Moore was a supporter of the authority of the Cortes?—A. He certainly was.

Q. The persons he was opposed to were those who opposed the Cortes?—A. And justice altogether—those engaged in mal-practices.

Q. Mr. Moore supposed he should now

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[88] Above two years before.

have support from a person who professed to act upon the principles upon which he went? —A. That was the principle he went on.

Q. You have been asked what would be the consequence of a merchant being horse-whipped upon the Royal Exchange?

Lord Ellenborough. I do not think horse-whipping upon the Royal Exchange has been mentioned.

Mr. Attorney-general. I put a question upon that subject.

Mr. Sergeant Best. Was the opinion you gave in consequence of being conversant with the state of manners of England or Spain?—A. Of Spain; I have been there almost all my life.

Q. He had not the means there which he would have here of making his case known? —A. No, he had not.

Lord Ellenborough. The difficulty he stated was the political differences he was engaged in, particularly on the subject of billeting.

Mr. Sergeant Best. As far as he communicated to you, was he not a supporter of the Cortes as then established?—A. Certainly he was.

Lord Ellenborough. We have nothing to

do with the Cortes, nor the question of their authority.[90]

Mr. Sergeant Best. That is the case of the Plaintiff.

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[90] Surely there must be something to do with the question of the authority under which it is supposed billets were given.

MR. ATTORNEY-GENERAL.

MAY IT PLEASE YOUR LORDSHIP.

GENTLEMEN OF THE JURY,

SOME hours ago my learned Friend, with a mixture of that courtesy for which I am sure I ought to be extremely grateful to all my learned Friends of the profession, expressed to you that he apprehended that he should have no opportunity of addressing you in this cause again, and bespoke that you would have from me, I am not sorry that I have forgotten the terms; a speech which he described in very flattering terms indeed. My learned Friend was quite correct in his first supposition, and could not fail to be most perfectly sure of it, because he knew that in the nature of things his case[91] cut me out of

[91] A special count was put in the declaration expressly to enable the Defendant to justify his conduct if he could, and so far from my supposing at least that my case "cut him out of all the possibility of calling any witness, or offering any evidence," that my only anx-

we are here gentlemen in a question upon an assault inflicted by the officer (whom I describe, in the language of my learned Friend, of high rank and of transcendent merit) upon a merchant; any where and every where that is a grave subject for consideration addressed to merchants; merchants not to be compared with any that the world has ever seen, for honour and integrity, for so without offence to any of the mercantile communities of the world, I may speak of those of the city of London. To a jury of merchants when such an action is brought by a person stated to you by his counsel to have been a British merchant, carrying on a British trade, such an appeal cannot fail of being made with considerable weight and effect upon the minds of those to whom it is addressed.

Gentlemen, no man will hear from me to day, for if he were to learn it from me he would find me violating the orders and instructions I have received from my honourable client; no man will hear from me to-day any thing calling in question the enor-

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me I might rely that he would do his duty when it came to the push. I think the quotation from the speech of my counsel made by the learned Gentleman is sufficient comment upon it.

mity of the indiscretion, and the impropriety of that which General Adam has had the misfortune to do upon the present occasion. Gentlemen, he is now at the age of thirty years, having passed from that of sixteen, every hour of it, not in the luxury of home, not in the bed of ease, not in the lounges that belong to some parts of military life, but every hour of it in the camp; every hour of it where the British standard has been unfurled; there has he been found in places of danger and of difficulty, he is now covered with wounds obtained in the service of his country, one of which carried him in a litter[94] after this assault into the presence of Mr. Moore at Alicant; would to God it had made an end of this cause, as *from circumstances* I think it ought to have done; down to the immortal day of Waterloo,[95] where again he had the

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[94] *Unfortunately* "the d——d Alcalde at Xixona" spoiled the whole of this imagery in embryo, so that I cannot conceive by what process it presented itself to the mind's eye of the learned Gentleman, nor how he can talk of circumstances in a transaction that never took place. Why not give a detail of them boldly? There was to be no reply.

[95] Expecting this cause would have been heard in the month of July, I foresaw that Waterloo would be "tacked on," the defence, though I was told by

good fortune to bleed in the service of his country; but I say not as an advocate, but

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my legal adviser that it could not legally be done; in consequence I penned the following observations, which were handed to the learned Sergeant by Mr. Lowten a little before the trial commenced, with a request that he would peruse them as they were short.

"As something may be said of the late victory at Waterloo, and of the part the Defendant had in it, I think it proper to submit to Mr. Sergeant Best that it will be right for him to shew that it is just at such a moment peculiarly incumbent on a British Jury to prove the paramount authority of the law. It is just at such a moment that it will doubly redound to the honour of England to prove to the world the impartial administration of British justice. It is also at such a moment that it is peculiarly necessary for a British Jury to recal military men to a sense of their duty to the community, and to prevent their trampling on the rights of their fellow-citizens.

"Every country possesses men who encounter wounds and death at the head of battalions and divisions, but no country in Europe except England possesses a jury to guard the rights and privileges of Englishmen in every part of the world. If the trifling fortune of the Defendant is mentioned, I think it proper to submit to Mr. Sergeant Best that it will be right for him to shew that it is exactly from persons of that description (styled soldiers of fortune) that the civil liberties of a community are

speaking his sentiments none of those wounds have afflicted him so much as the transaction of the eighteenth day of December. It is impossible for any man to feel them higher than this honourable person has done from that hour[95] down to the present; and

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in most danger. Men of large independent property do not sink all their ideas of civil liberties into passive obedience, but men who owe their superiority over their fellow-creatures merely to the sword, and expect to support that superiority only by following the dictates of another supposed superior Being, are generally ready to trample upon all the rights of citizens because they think they risk little or nothing in doing so; and therefore it becomes peculiarly incumbent on a British Jury to check such modes of reasoning by an exemplary punishment."

[95] To all this I can only reply, that unless the learned Gentleman treated the brief and instructions of his client in the same manner as his learned Friend did mine, they could not have been drawn up in the spirit of a Chevalier, *sans peur et sans reproche.* He would have said, "*Sacrifiez tout hormis l'honneur.*" The learned advocate has certainly protected his client's purse, but if he had at heart "the reparation of honour," "the establishment of his fair fame," and "the replacing him in the rank from which his conduct had degraded him," I think he should have advised him to put a justification upon the record, and to facilitate by every means in his power the appearance

there is nothing that he would not have done at any moment—nothing which, if this had

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of every witness necessary to elucidate the truth. Me he could not dishonour as a man, but he could injure as a merchant, and he did so without shame and without remorse; for during four months he never made the slightest offer of reparation, though aware of the extent of the injury he had done me; he had seen me in a situation (though not in a litter) which, "from circumstances I think," ought to have excited both shame and remorse. Had this "fourth of the six children of Adam" the feelings of a man to which I appealed on the 29th of December, he would not have thought it odd that I should be anxious that my mother should not be afflicted by false reports of the nature of those contained in the letter from Mr. Athy, which I inclosed to him; and had he complied with my request, he would, perhaps, have delayed her dissolution, and spared me a two years' attendance on Doctors' Commons, with a probably large diminution of fortune, in consequence of my adherence at Alicant to the object of her wishes and instructions. When, therefore, the learned Gentleman talks of my "mighty vengeance," he only shews, that in his touch of imagination about the litter, he forgot the rude grasp of truth, which would have reminded him that at the period to which he alludes, I proved more than a common absence of personal revenge towards his client in my offer to Admiral Hallowell; and although I consider the defence and conduct of the learned Gentleman at the

been an action merely for the reparation of honour—merely for the establishment of fair

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trial, (very proper, no doubt, in an advocate of talents,) as the *ne plus ultra* of human baseness, if dictated by Col. Adam, I would receive him into my house to-morrow, under the supposed, though not under the real, circumstances of his wound at Castalla; but as this "Charter-house scholar," "this officer of high rank and transcendent merit," "this honourable client," "this General, now at the age of 30 covered with wounds, *one of which carried him in a litter*," "this honourable person," "*fortunately* bleeding at the immortal day of Waterloo," has not favoured the walls of Guildhall, through his counsel, like a worthy alderman a few days before, with—

Who takes my purse takes trash—'tis something—nothing:
'Twas mine—'tis his—or any body's.

I will tell the learned Gentleman what the extent of my "mighty vengeance" on his client's purse would have been if such a verdict had been given as I was entitled to, had my case been properly made out. I should have expected his client to pay in the first place all the expenses attending the cause which would have been comparatively small if he had acted as I would have done in his situation, including an English and Spanish publication of the trial. In the second place, 1800 hard dollars to Messrs. James Hunter and Co. of Greenock, who received so much less on a cargo of theirs in my hands, in consequence

fame—merely that a gentleman who had been degraded should be replaced in the rank from which he had been degraded, supposing it to be by the misconduct of others—nothing which was consistent with the honour of a gentleman, that General Adam would not have forced upon this gentleman—but how far that was possible, I must leave to any person who has seen the Plaintiff conducting[96] this cause—who has observed[97] the manner in which my learned Friends have been driven from witness to witness, and from topic to

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of my being obliged to leave Alicant;* and in the third place, a thousand pounds for the establishment of a free school and press at Alicant as a monument of British justice, which I trust will long survive the memory of the Adelphi, and the Charter-house.

Ανδρων γας συφροσυνη μαν εσλι, α μεν αδικαιο ισυχαζειν αγαθον δε αδικημασιν, ην μεν ειρηνης πολεμειν, εν δε παρασχων εν πολεμω παλιν συμβηναι.

[96] If I could have conducted it without being hampered by legal trammels, with which I am of course unacquainted, the learned Gentleman would have been obliged to defend his client in another way.

[97] Any person who could observe the Defendant in his litter could observe all this—nobody else.

* I however remitted 4,500 hard dollars more to them for the cargo, in consequence of landing it in my warehouse at my risk, than if I had sold it on arrival from on board, but had it not been for the conduct of Colonel Adam I would not have sold it for less than I first demanded.

topic, calculated, as some persons foolishly have thought, for the meridian[98] in which we are trying this cause—Do they suppose, Gentlemen, that when we get to Guildhall a jury of merchants' profit can be made of such a thing, as if we were trying a matter fit only for a jury of shopkeepers—if not, why in a case in which, as the noble and learned Judge says, there is enough to call for a sober consideration to arrive at the damages, are we to have this story[99] of the gentleman having been obliged to break up all his mercantile establishments at Alicant—By whom?—By General Adam?—On what ground is it that we hear that General Adam had compelled him to quit Alicant?—Why, Gentlemen, I am not extremely curious in general, and especially when I have the assistance of such a person as my learned Friend, Mr. Abbott, to look to the pleadings.

I ask my learned Friends the general point,

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[98] The learned Gentleman would, perhaps, be more partial to the meridian of Constantinople or that of Madrid, no longer polluted by "the new lights of the new philosophy." I suppose the subsequent supposition of a supposition is derived from the old lights of the old philosophy, by its sneer upon shopkeepers.

[99] Because it is no story, but a fact, unlike the whole of the learned Gentleman's oratorical display.

and do not give myself the trouble always of reading every word of the plea; but when I had my attention called to this, that we were stated to have committed an assault, and to have compelled this gentleman to leave Alicant, I confess the impression it made on my mind was the impression you have heard it made on a mind infinitely better informed than mine can ever have a chance of being. I had supposed that this gentleman, being in a place where the comforts of British officers and wounded soldiers, where the convenience of the British army, allied with the Spaniards, was in a critical situation, shall I say—No, Gentlemen, but that in a moment in which the fate of Europe and the world, in which the fate of all men scattered over God's fair creation was at stake—this gentleman, feeling something essential for the purpose of enabling those allied forces to carry on the great and momentous, and arduous contest in which they were engaged, to be counteracted by the Plaintiff—I really was afraid that my client, in an evil hour, had either locked him up in one of the dungeons of Alicant, or had marched him among the soldiers under his command to the head-quarters of the illustrious Duke who commanded those armies, and that he had there been imprisoned

for a considerable time, and that thereby his establishment had been broken up.[100]

Gentlemen, this convinces[101] me that Mr. Moore felt, and feels, that in truth the assault is but a simple matter compared with that which his mighty vengeance induces him to represent it to be—that he considers that a simple matter comparatively; not that I mean to state it to be an idle matter—do not let any man misconceive me—if any expression of that sort shall fall from me, conceive it to be in the haste of indiscreet speaking—I consider it a grave subject, and my client has always so considered it.

Now, Gentlemen, let us see what it is that is charged against General Adam—that he broke up all the Plaintiff's establishments—One gentleman tells you he would not have lived there after he had been so insulted, and another puts it that he could not after that he got his bills discounted—[102]that he could not

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[100] He did much worse—he would not have dared to have met me face to face before the noble Duke on such an occasion, and it was not *there* that I could have been imprisoned.

[101] I might, in the learned Gentleman's words, ask him, Upon your oath, are you convinced of this?

[102] I do not find a word of this in the evidence.

make his contracts with the commissariat, or get the bankers to pay his bills, because some person had done an illegal and a wrong thing in a gentleman's house, no person being present but the person who had been assaulted —the instrument of committing that assault —the person who had directed it, a foreign officer, and no other person—but this was to break up all his establishments—so one or two witnesses have told you in their opinion it must have done.

Now let us try that, my learned Friend Mr. Sergeant Best, probably[103] upon some communication made by his client asked just now; when you were talking of what might pass, were you speaking of what might pass upon the Exchange of London, or with reference to Spanish manners? oh, I was speaking with reference to Spanish manners. Now I beg to lay in my claim for a British merchant, and to ask whether the character of British merchants does not stand as high here as the character of merchants in any part of the world. Now if any man were to come into your house, and conceiving there had been matter

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[103] More probably in consequence of what was said by the learned Advocate himself, his learned Friend did not pay much attention to my communication.

of offence to give you three or four blows, who is there that can gravely state that your mercantile houses, that your prosperity, that your success in life, you being the person beaten, if I may be permitted for a moment to suppose that that misfortune might happen, as it might to any one of you whom I address, that your establishment must be broke up; Gentlemen, the argument would be much stronger the other way. Have we not heard of merchants in the city of London who have come to blows upon that which ought to be the most peaceful seat of commercial men, the Exchange in the city of London? Have we not heard of indictments of persons for assaults committed under such circumstances? But was there ever a special pleader to be found, *any man under the bar*, any man in an attorney's office who insulted a court and jury by stating per quod[104] the merchant was a disgraced and a degraded man, and was obliged to break up his establishment? He has had an injury done to him and will be compensated for it, but no one will think the worse of him for that which has happened.

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[104] I stated no such thing, nor was any such thing stated for me.

But, Gentlemen, let me ask, is this in the opinion of the Plaintiff himself, that which has been his situation? He had been upon his commercial concerns absent from Alicant during one, two, three, four, five years: let us see, Gentlemen, what had been the state of things during that period, and compare it, as it belongs to the important question in this cause, with the state of things after his arrival. During his absence his house was filled with military officers and persons connected with the military; filled,[105] not by their taking forcible possession, but by the authority of persons who were bound to make an equal distribution of that which must be grievous and oppressive to every body; there was his house, filled from the bottom to the top by persons connected with the army, opposed to an enemy in formidable force in the immediate neighbourhood: when Mr. Moore comes from this country with some new lights upon this subject, he finds persons in authority acting under the Cortes, in the perilous and

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[105] My mother's own house was filled by taking forcible possession without any semblance of authority whatever; of *this house* I got possession by authority.

miserable condition[106] of a nation whose Sovereign is in confinement, if they may indeed yet hope that he is alive; he finds a great number of persons sustaining miserable inconvenience, and he is informed that in his house, soldiers and officers had, during his absence, been quartered. We come now, thanks to the discretion of the Plaintiff in giving me his partner, the last witness, to know the temper and the turn of mind in which this gentleman begins to establish himself on his return to his commercial seat; he complains[107] that every thing which is going on is

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[106] Happy! thrice happy nation! relieved from the "perilous and miserable condition in which it was, under the Cortes in 1812. The new lights have been extinguished, the ancient and venerable standard of the Green Cross (the Banner of the Inquisition) is once more unfurled, and the bravery of a British army and its chief, (whose christianity, if I am to believe an Augustinian preacher of this sovereign, *he is yet alive*, was much superior to that of the Cortes) has restored, (according to the same authority) to the disconsolate villages, their beloved friars, with the inquisition.

[107] I complained of nothing; I demanded possession of my mother's house as a right, and wished to prevent the English name from being made a cover for every species of violence, which would have been

a race of injustice, oppression, and violence; we are not to expect amidst the din of war and the agitations which must belong to a place, which, if it had been a fortified town, would have been well described as a place of siege; we are not to expect that the administration of justice is to go on, as thank God it has in this country, during the operations of the last twenty years: but we find this gentleman[108] determined to set up his own authority; he considers that the billeting soldiers and officers upon his house is something illegal, not that the paper brought does not bear the impress of authority, but he says, there is no authority by which any person shall place a soldier or an officer upon my house, I will not receive you, and if you are disposed to take possession of any part of it under the authority of those who send you here, you must do it by force.

Now, Gentlemen, my learned Friend desired you to adopt that, which I think you would not easily consider to be the mode of admi-

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fatal to the English part of the allied army, had an enemy *really* appeared in force.

[108] I determined to do no such thing; but I wished to know who exercised the right of billeting.

nistering justice; towards the conclusion of his speeeh, he said, and it is an observation often made, I have no doubt I have often made it myself; I had better say I have done it myself, but I consider it a most unrighteous mode of desiring a jury to decide: put yourselves into the situation of the Plaintiff, believe yourselves to have been at Alicant and beaten by the Defendant, and then give such a verdict as you would expect yourselves. I have said in the course of the examination, there is no justice but what is fair, and I say, that is no justice at all, if a man who comes into a jury-box, puts himself into the situation of one of the parties, and then forgets that he is to take into consideration the condition of the other, and to pause and to weigh well, and to see, what, as relative to the two, the one[109] ought to receive from the other: but in order to put this argument to you, my learned Friend desires you, as he must, to put yourselves into the situation of the Plaintiff; now, says he, Gentlemen, if (which God[110] forbid) this country should at any time be overrun with a foreign force, and an officer should come into your house and should

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[109] I wished for no more. [110] Amen.

bring a person with him, and should insult you in your house, and should desire that person whom he brought with him to apply his walking stick with three or four strokes to your shoulders, should you not consider, and there I must refer you to what my learned Friend said, for my 'memory'[111] is not equal to such a touch of imagination, for it was almost the highest flight I ever heard, but I will join issue with my learned Friend, place yourselves in the situation of the Plaintiff, conduct yourselves as the Plaintiff did, give the same provocation[112] to the officer which he did, consider not the situation of yourself only, but what you should under such circumstances deserve from such an officer. The picture that my learned Friend presents is that this country is at this moment overrun with a foreign force in great power and strength, threatening to invade you in the country; that must be the greatest of all calamities belonging to any country governed by regular authority, but put the case that its

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[111] If the learned Gentleman's memory is not equal to such a touch of imagination, I suppose the following touches of imagination are almost beyond the highest flight of his memory.

[112] What Provocation?

monarch is a captive in a foreign land, that there is a divided state of the public mind, one drawing one way, and another another, and a great many disposed to take an opportunity of pulling down all authority whatever, in this state of things a high-spirited nation, but here I must drop the pursuit—the thing never has happened from the creation of the world, and unless some other nation shall be placed by the permission of Providence in the situation in which the Spanish nation has been placed, and Great Britain shall arise for her salvation, and for the salvation of human kind, the remainder of the parallel will not be found that a high-spirited nation forgetting all which belongs to indulgence and comfort, and satisfaction at home shall leave their own shores and pour out their best blood and their best treasure[113] to fight the battles of a country in that miserable state, and that in that state it shall become necessary to seek a house and a home to those who are becoming the instruments of your salvation. My learned Friend in the

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[113] Does the learned Gentleman think the battles of a country are fought by increasing the misery of those who live in it?

argument[114] he addresses to you supposes, oh, no, I entreat pardon of my honourable and learned Friend, he supposes no such thing, but the argument for the purpose of obtaining damages, supposes that some one man might be found clothed with the character of a British merchant in the city of London, who under such circumstances would say, the enemy[115] is at our gates, the danger is imminent, no man can tell when or with what violence the storm is to burst upon us, nothing can save us but these brave men who have come to ally themselves to our army, and to die and perish under our walls if necessary for our preservation; here they are shivering in our streets, here is[116] the minister of religion belonging to the allied army, the chaplain of the British forces, seeks permission to shelter his head under the roof of you a British merchant. Which of you twelve gentlemen will answer the challenge of my learned Friend? A British merchant blocks up the entrance through his back door

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[114] An argument in a touch of imagination!

[115] What could the enemy do more than Colonel Adam? No open enemy would have so acted.

[116] Bravo! Surely the learned Gentleman flies higher than his learned Friend.

and folds[117] his arms and says · I have come from England not to fight the battles of Spain and of England and of Europe, but with new lights of the new philosophy, with improved[118]

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[117] It was the learned Gentleman's client who folded his arms, as my learned Counsel could have stated without a touch of imagination.

[118] His Majesty's Attorney-general then really believes that these matters are better understood in Spain than in Scotland, for the learned Gentleman permits Commissioner Adam to carry schemes of improvement into the latter country, and that without the personal consent of his sovereign; but I hope and believe that that sovereign will also return to the exercise of his regal functions, and by that return convey more gratification to his subjects than the captive monarch who appears to excite as much interest in the breast of the learned Gentleman, as no doubt he has caused admiration among the cloistered monks of the Peninsula for his success in enlisting so illustrious a recruit as the Prince Regent of England, Knight of the Immaculate* Conception of the Virgin, " antes del parto, en el parto, y despues del parto;" though the Archbishop Inquisitor General is a brother companion, and it is to be presumed, *ex*

* The order of Charles III. of Spain was specifically instituted in honour of the mistery of the Immaculate Conception, and has a special committee, at the head of which is the king, with a body of consulting theologians attached to it, " para tratar de los asuntos relativos al misterio de su Patrona."

doctrines upon the subject of government, with more correct notions how authority ought to be exercised.

My partner, in my absence, has been a condescending man; he has permitted the soldiers and officers, and the officers' wives, to be quartered in my house[119]—I will have none of them—they shall not come here—I intend, with another spirit than the spirit of meekness which has governed this timid, condescending partner of mine in my absence, to act up to the letter of the constitution, and to resist at all hazards all these unrighteous innovations—inuovations of whom—of Colonel Adam—no, of the Spanish authorities under whose protection he was at that time carrying on trade—where an application was made for the purpose of procuring consent to the billet which had been sent *by authority*

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officio confessor and conscience keeper to the rest of the fraternity.

For such a service to Mother Church, well may the "Cura" at Rome, to use the words of the dethroned Maria Louisa, constitute himself gaoler of the "legitimate" sovereign of Spain and the Indies.

[119] They had been placed there in his absence. He obtained an order to have them removed, and I consented to their remaining, and admitted others.

for the chaplain of the British forces; it was refused, and an opportunity was taken of sending some paper.

And now, Gentlemen, you shall see how correct[120] I will be; I will transgress no rules. —He took the opportunity of sending some paper contents, at present specifically unknown, in the hand-writing of himself, the present Plaintiff, Mr. Moore, to the lodgings of Colonel Adam, then Adjutant-general of the British forces at Alicant.—Was it a note about business—was it a letter of complaint —was it an invitation to take up quarters at his house,[121] or was it something desperately offensive?—I think you will be able to answer that question. When the visit is paid, the paper is propounded, and he is asked whether it is his hand-writing?—Now where had Colonel Adam got it!—Why, at his lodgings.[122]—He says, it is mine, but I did not mean you by it—mean you, as to what—

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[120] If the learned Gentleman be so correct after this exordium, what would he be without it?

[121] If my counsel had demanded the papers, notice to produce which had been given by my solicitor, the learned Gentleman would have been saved these enquiries.

[122] Who told the learned Gentleman so?

why, of course,[123] as to something complained of; and then he goes on, on Colonel Adam stating that the chaplain must have quarters, to insist that he shall not have them there, and that he shall not have any but by force. Now let us enquire a little into this, how should we have conducted ourselves—how were his neighbours situate. The witness says, 'that[124] there was not any man with a house, even small, who had not a number of persons billeted upon him, to his great inconvenience—then why is this philosopher, this champion of the constitution, this man who is to act up to the law, to be excused—he is a man with a splendid house—a house which, during the administration of his timid and condescending partner, had received several, but now there were none. What says Colonel Adam—he says, the chaplain of the forces must be accommodated: I cannot[125] subject him to the disgrace of having to force his way to the room where he is to repose his limbs when he comes in from duty—and nei-

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[123] Why, of course? it did not mean any such thing.

[124] What witness says so?

[125] Still flying, the learned Gentleman is not easily tired.

ther the chaplain nor the officers sought for down beds—to be permitted to spread his boat-cloak would have been an indulgence at such a period; but the Plaintiff says peremptorily, No man shall come here—Colonel Adam says, then I must give up my quarters, and make my quarters good here—does he say, and by violence seize upon a room in your house?—No, the authorities have sent some one person to be billeted upon you—that is a person of a clerical character of the high rank and situation of chaplain of the British forces: if you will not receive him, I must be here,[126] with that little of parade belonging to a person of my rank in the army—there must be a centinel at the door.

Under these circumstances,[127] Gentlemen, the assault is committed—I say there is no excuse or apology; Colonel Adam says so—he has always felt so from the bottom of his

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[126] The whole of this picture is by the same hand as the one *respecting the litter*.

[127] If the circumstances were really these, the learned Gentleman's client would not have "felt from the bottom of his heart" for himself—for me it is clear he did not feel at all.

heart. And now, Gentlemen, do not say I am going to cajole you into that which is less than your duty. I put the strength of the case against him when I say that Colonel Adam feels very much that this should have been inflicted by a second[128] hand, if at all; but we are now speaking of a man at that time, between six and seven and twenty years, and who, by his great exertions, his distinguished conduct, and his daily and hourly, and laborious service, has now attained[129] the rank he has—Is that a season at which a man deliberates[130] and considers all the circumstances by which his conduct is to be surrounded—has he had any malicious intention toward this gentleman—if he had had any wish to render him a man less esteemed than he was in the town of Alicant, some public[131] place would have been chosen, and then, instead of two or three strokes on the shoulder, any mark of indignity and in-

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[128] He dare not have done it in any other way.

[129] Others, at least equally deserving, have not been equally fortunate, that is all that can be said.

[130] A man of eighty could not have more the appearance of considering—whether he deliberated, I cannot say.

[131] *The truth* would then be known.

sult would have answered the purpose of putting him[132] into disgrace among those with whom he was surrounded—there was then, in that respect, as much of consideration[133] to lessen the disgrace of this as in the mind of this very young[134] officer there could be.

Gentlemen, what remains, a verdict must pass against General Adam — who doubts it; he must pay for this assault; but I will tell you what Mr. Moore requires at your hands; he requires that a man, who, if not born in your military service, has been cradled in it, and has grown up in it, shall be-

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[132] *He* could not put me into disgrace, but he could put me into danger, by exposing me to the insults of others, who, aping his distinguished conduct, might attack me by "delegated commissions" of bravos from all parts of the world, ready to be hired at Alicant, and he could ill-treat me himself, in consequence of the power vested in him over others for far different purposes.

[133] There was as much of deep design to prevent the truth from being known as could enter into the head of a Sicilianized Scotsman, and it has hitherto succeeded.

[134] This youngster had, however, already sat in judgment, as he told me, on the supposed emissaries of Queen Caroline, one or more of whom, I believe, were executed.

come an exile from his country for the remainder of his days. Into any other military[135] service General Adam cannot enter—he may, and he must, find himself respected and esteemed in all the associations which he has formed on the continent, but he must be exiled from this country, if any thing like severe damages are to pass against him upon the present occasion. Gentlemen, he is a soldier, he has as many wounds as any man, but it is notorious to all that he is not a man of fortune: and we know that it is not by a life such as his from the age of sixteen, that a fortune is to be acquired; and if any person were to say, aye, but he has connections who can find the damages, I should say that was an unjust proceeding. But I will state to you what belongs to this part of the case.

We know, Gentlemen—to me it is a subject of, I do not say almost or nearly, but I say it without qualification of any sort or kind, that it is a circumstance of the highest satisfaction and gratification to me in the whole course of my life, that I have been intimately acquainted, and in familiar intercourse,

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[135] I believe that if his conduct to me could be satisfactorily proved, he would be discharged from the military service of this country notwithstanding.

with his most excellent father,[136] a man born to a splendid inheritance, which in his early days made him, and those who had the care of his education, believe that the labours of any profession, and especially the labours of such an one as that I have the honour to be engaged in, were not necessary for his own honourable support, or to enable him to leave those who were to represent him in after-times a very ample inheritance. It is part of the history of our country[137]—no man can pass from this place to Westminster without hearing that those who were nearest and dearest to him sacrificed,[138] in those extensive buildings in the Adelphi, more than one of those splendid fortunes to which he was entitled to look forward as the inheritor. We

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[136] My father and grandfather, and great grandfather built houses, and gave good dinners, though I did not state it to my counsel, not supposing this subject could be introduced. I presume they were also of a convivial disposition, as they have left me the gout for an inheritance. Perhaps the learned Sergeant, from a fellow-feeling, would have stated that at least for me.

[137] And so is the conduct of Hampden.

[138] What has the ancestors of a man laying out their money in a bad speculation in house-building to do with his conduct to me at Alicant?

all know, for it has passed within our recollection, that he came to our profession, and did not feel[139] that it was irksome or disgraceful to work as we do—how honourably—how in the estimation of all who saw him, conferring benefits upon all who had the advantage of his judgment and his labours, and his intense assiduity, and his better qualities than any of these, the best qualities of the heart, we have all witnessed—that man who not only made himself the friend of those who applied to him, but who surrounded all those within his reach with his friendship, is sent now to bless his native land, by communicating[140] to them that most inestimable of all blessings, greater than the salvation which his son's arms had a great share in producing, for the subjugated nations of the continent—he is gone to communicate to those who have not yet had its benefits in his native land, the transcendant and inestimable blessing of a trial by jury.

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[139] I must confess the learned Gentleman is not very vain. One would be led to imagine that it was the father of the human race who had come to *this profession*, which he thinks it *an honour* to be engaged in, and did not feel *it disgraceful* to work as he does.

[140] That is, he is gone to communicate new lights for his son to extinguish.

But every body knows that Commissioner Adam is not a man of fortune, he has not had the means of being so, and whom do I present to you—the fourth of his six children, all of them wherever they are known beloved to the extent in which they are known; they find their way into our hearts, Gentlemen, and that is one of the things that has made me more than ordinarily unequal to the task[139] imposed upon me; to give your verdict for that which they have not the means of paying (large damages) upon this occasion, would be to bear hard upon one of the most honourable and estimable families I have had the good fortune to know; they have not the means of paying large damages, and I think I know you too well to believe you will be the voluntary instruments, now that the din of war is over, and that we are enjoying the fruits of the ever to be remembered day of Waterloo,[140] of saying that General Adam shall be the only man not to be permitted to enjoy all those benefits and blessings. Some damages you must give, but

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[139] Of making the worse appear the better reason as his learned Friend describes it.

[140] One would imagine that General Adam gained it.

you will remember who the defendant is, what was his age, and what was the provocation to that of which he has been guilty, and I know you will hold the scales of justice equally between us. Gentlemen, I have now relieved myself of an anxiety which has belonged to me for many days past, I have done little enough to my own satisfaction, and less than I could have wished for my most honourable[141] and excellent client. To you I now commit his fate.[142]

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[141] All, all honourable men.

[142] Before I take leave of the speech of the learned Gentleman, I must beg leave to complain of the "servile"* bursts of oratory by which it was distinguished. I cannot persuade myself that even in the good old times of the 15th century, a Judge from whom (if I can believe certain emblazoned parchments in my possession), I am descended, and after whom I am more certainly named, would have heard an act of flagrant injustice attempted to be palliated by a presumption that the party aggrieved entertained utopian sentiments, though that Judge according to an article in the Edinburgh Review was sufficiently hostile to the then new lights of the reformation, propagated by the press, then as now the terror of fools and knaves.

As to the "new lights," of the "new philo-

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* As the learned Gentleman talks of parties in Spain, he must know that the two parties are distinguished by the appellations of Liberal and Servile.

sophy," of which the learned Gentleman speaks so much, I acknowledge no other philosophy than that which is neither more nor less than the philosophy of the founder of a religion of which the learned Gentleman does not, I presume, think it irksome or disgraceful to be a member, however that philosophy may have been subsequently involved in legal mazes and distinctions by the followers of "the old school" of Gamaliel.

The *Times* has lately favoured the public with some severe strictures on the English Bar. The editor upon this occasion seems some how or other to have got hold of the pen with which he formerly disseminated "liberal principles." I thought he had consecrated it at the shrine of some Indian Idol upon the retreat of Massena from Torres Vedras, previously to preaching a crusade in favour of "legitimacy," as Saint Ignatius of Loyola is said to have done his military accoutrements at the shrine of Monserrat, previously to entering upon a spiritual warfare in favour of the Virgin and her Son. But if these strictures are well founded, it surely must be an object of Messiah-like expectation, that some Man should arise from *under the Bar* (though it were from an Attorney's office), who trampling upon mere forms of etiquette, (the fence of folly and the clog of genius), careless whether his gown proceeds from the back of a sheep, or the bowels of an insect, and equally uninfluenced by the costly viands of a Pavilion, as by the potatoe-and-point of a cabin, shall establish himself the champion of the new philosophy; that is to say, of the equal right of all mankind to civil and religious liberty,

without any limits but those imposed for their own benefit by their representatives; and then a popular and useful reform may perhaps be brought about by the persevering independence, industry, and firmness of a "liberal" and consistent barrister, who, instead of priding himself upon being an advocate of talents, capable, by mere dint of effrontery, of making the worse appear the better reason, till he can leap into the judgment seat, will make it his boast never to undertake a cause he thinks wrong, nor flinch from one he considers right.

SUMMING UP.

*LORD ELLENBOROUGH.**

GENTLEMEN OF THE JURY,

THE question which has occupied your attention for a considerable time is one which involves topics of a very serious nature, and which require in their discussion and consideration a very discriminating judgment, and that judgment I know they will meet with. There are on the part of the De-

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* I shall not permit myself to make any comments upon his Lordship's charge, as I propose to make a motion for a new trial founded upon that charge; I only take the liberty of printing in Italics those parts upon which I should think myself justified in commenting, if I did not consider it more respectful to be silent for the present; convinced as I am that his Lordship would not have struck his desk so often had the truth been made manifest.

fendant no doubt many circumstances of conduct wholly indefensible. There are likewise on the part of the Plaintiff claims that cannot be maintained; it will be for you in the application of your good sense to the evidence given in this case, to give full effect to the claims which can be sustained, and to recompence the outrageous insult offered to this gentleman by adequate, fair, reasonable damages; at the same time not *introducing into this case that which has been, I think, not discreetly endeavoured to be introduced, damages for the total destruction of the commercial existence of the Plaintiff who comes before you.*

The plaintiff is a merchant who appears to have been settled at Alicant, in Spain, and prosecuting his commercial concerns, we are to presume, with success. *Having been absent from Alicant in England, and other places, for two or three years, he returns about October*, 1812. *At that time he appears to have thought that that which had been done for the necessary defence of the country, and for the necessary accommodation of the military, was done contrary to law, and to that he sets himself up with determined opposition. Now, Gentlemen, what country did he return to, and what had he left?—He had left a*

country in which, at the period of time when we must have supposed him to have left it, it was more than hazardous whether he would have house or trade, or any thing, to return to. In the mean time, he finds that there are those who have baffled the attempts of the enemy—that his countrymen and the Spaniards are occupying Alicant, and every house in Alicant receiving persons who are billeted upon them, from the necessities of war. We will not go into the nice question, how far it might have been correctly and justifiably done without the production of a billet for this clergyman, but that they were actually billeted, and every house received persons under billets. And I think one of the clerks said they were last billeted upon Mr. Moore, by which he must be taken to mean that they were in fact billeted upon all.

Prior to the time of this assault, which you will recollect was the 18*th of December, there had been a communication between General Adam and Mr. Moore on the* 16*th, and there had something passed in communication to the Adjutant-general's office, or in the newspaper.—It is admitted that he had been a writer in the Diario, and some paper or other is produced to him by Colonel Adam, when he pays that unfortunate visit to him on*

the 18*th of December. The worst part of the conduct of Colonel Adam is this, that before he paid the visit, he had asked the sergeant whether he would beat a man for him—that is the part one views with most concern, for he had gone with the purpose of beating a man, at least with the* suspended purpose *of beating him before he knew what might pass in the communication with him, and therefore that purpose must be referable to some supposed matter of a libellous nature, or to some rude communication made to him, than to what arose out of the communication he had with him.*

I will, Gentlemen, state that which passed, and it is really to the credit of the sergeant and of any person under whose supposed influence he may be, that he has spoken so openly. The learned Sergeant said he did not discredit the man, he took for granted he would give a fair testimony, *and a fair testimony he has given, not sparing his officer, to whom, I have no doubt, he is very honourably attached;*—he says, " Col. Adam asked me if I would beat a man for him," this was about two o'clock in the afternoon, my answer was, " Yes, Sir," shortly afterwards he asked me to go with him, he did not tell me to what place, I accompanied him, there was a Lieut.

Roquefeuille went with Col. Adam and myself and another officer a captain, whose name I do not recollect; I do not think the Rev. Mr. King was with us, there had been a doubt upon my mind whether he was there at the time. Col. Adam and myself were joined by the captain and the lieutenant at the Adjutant-general's office, but they were not there when he asked me the first question, whether I would beat a man for him, that was about an hour before I saw Lieut. Roquefeuille and the captain. Col. Adam, myself, and these two officers then went to Mr. Moore's house which is about 150 yards from the office; I did not know the warehouse, I do not recollect seeing any warehouse, we went directly into Mr. Moore's house, we went in at the street door, I do not recollect whether the Rev. Mr. King was there, I went to the sitting room where Mr. Moore was: now these are the circumstances that took place at the time of the assault. He was alone reading, Col. Adam pulled a paper out of his pocket and asked him if he was the author of it; Mr. Moore said it was his handwriting, therefore, *of course he made himself privy to the contents of the paper, and is the person who so far was instrumental to its publication*, but that he did not mean it to Co-

lonel Adam—the paper was not read out.—Colonel Adam asked Mr. Moore why he refused Mr. King a billet upon his house; Mr. Moore said it was not lawful, that no person was authorized to billet any person upon his house. Colonel Adam said he would give his quarters, those he had at the Adjutant-general's office to Mr. King, and he himself would remain at Mr. Moore's house. Mr. Moore said he would not suffer Colonel Adam.—*So that the objection is not to the person of the chaplain, or to any sort of billet not being properly authenticated, "but he would not suffer Colonel Adam, or any other person, to remain in his house unless by force;"—therefore, he fairly puts himself at issue with Colonel Adam, declaring that any billet to take place, it shall be done by force; and it would have been fortunate for Colonel Adam, if, instead of applying personal force to this gentleman, the force had been applied to carry into effect the billet about which, under the neeessity of the case, there could be no question; and if the Plaintiff had opposed himself bodily to the person to be billeted, that force might have been met by contrary force to overcome the resistance.* —The plaintiff said, "If by force of arms you take my entire house I will leave it,

otherwise you will not remain in it nor any other person;" so that he fairly traverses the right of billeting; and says, "*it shall be resisted* and that it is only superior force that shall carry it into effect." *Now comes the unfortunate part.* "General Adam ordered me to lay on; his exact words were, 'lay on, Power.' I had a stick in my hand I usually walked with, I had walked with that stick from the Adjutant-general's office to Mr. Moore's house, I seized Mr. Moore with my left hand by the collar and beat him about the shoulders, with the stick I had in my right hand. I gave him three or four blows across the shoulders which Mr. Moore endeavoured to keep off with his arm; the General then said 'stop, Power;' I did so. Mr. Moore said if there was any law in England he would have it afterwards, when he came to England."

These, Gentlemen are the circumstances of the immediate assault. Had Colonel Adam when the Plaintiff had said he should have no billet but by force, applied his force only for the purpose of enforcing his billet, he might have kept himself within the limits of the law; but unfortunately, irritated by some publication, which he supposed to be directed against him, or some contumelious letter he

carried into execution the suspended purpose he had formed and the commission he had delegated to the sergeant, and this must be the subject of your compensation in damages. I do not enlarge upon the circumstances how unfitting it is that indignities should be offered by any one gentleman to another, most of all by a military man, that has occurred to the feelings of those who have been concerned for General Adam, and for himself, by his counsel; he professes you have before you a person perfectly conscious of the impropriety of his own conduct.

With respect to the circumstances by which you are sought to be induced to enhance the damages, it would be a grievous enhancement if you went beyond the personal injury to himself. You will take into your consideration all the circumstances which surround a transaction of this kind, but when you are desired to give damages as if this had broken up his trade, I thing that is going beyond the proper line. It is said that he could not remain in Alicant, to carry on his commercial affairs. Why? Because he had been beaten. Then any man as soon as he has received an insult may say, I have been beaten in London, and I will therefore go to Amsterdam, and you are to pay for the transportation of myself

and my family, and the expenses of my settling there; that is the account given by one of the witnesses. Then another says, Mr. Moore could not have remained and carried on his business as before I asked him why? Because he required the use of his commercial house, and the use of his commercial house was to a certain degree obstructed by the occupancy of these military persons. Then there is another gentleman who is the partner, Mr. Strange, who gives an account from which it does seem that *though Mr. Moore had not determined to quit Alicant he had determined to get a clear ship, and to get rid of his partner, for he told him he would not have him, for he was of too soft and condescending a nature; he meant to upset and resist this system of billeting; he found fault with the authorities for taking possession of his property, by putting in soldiers, and not dividing the burthen equally. How does it appear it was not divided equally? But it is not an unequal burthen that he objects to, but the billeting of soldiers here at all. What, when all the French army were in the neighbourhood were not our soldiers* to be put under shelter *when they were fighting the cause of Alicant; were they not to have house room in Alicant? I can only say in respect of the violence used, Colonel Adam is certainly*

the delinquent. On other matters I do not envy the feelings of the man who would quarrel with the soldiers being billeted in Alicant, the place they were then defending by their arms, and which they wrested from France by their most extraordinary exertions. Mr. Strange says, he thought me of too condescending a nature; so that it seems as if he had meditated the devoting himself in a considerable degree to an opposition to this odious and abominable system of billeting. No doubt the having persons introduced into a man's house is a great inconvenience. but it it is still a greater inconvenience to have no house into which a man can go, nor no property, nor no defence.

The question for you, Gentlemen, is, what are the fit damages for this outrageous conduct. *It is to be lamented and must be lamented by this young gentleman, of whom I know nothing, except that in reading the Gazettes of ones country, one is a little familiar with the name of a man who has served his country, and has no doubt bled to its honour:* but that is no justification—*one laments that a man who has done well, should at any time have done ill; for that which he has done ill you will punish him in damages, but for that which he has not done, and in the*

case of persons who may seek to make that a handle to crush him, *you will not permit it to be so used, but will hold the balance of justice even. and to that justice I leave him in your hands.*

Verdict for the Plaintiff—Damages FIVE HUNDRED POUNDS.*

Mr. Sergeant Best. Your Lordship will certify this to be a fit case to be tried by a Special Jury.

Lord Ellenborough. Yes, I think it is very properly so tried.

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* When the Jury gave in their verdict, Mr. Sergeant Best said behind me, "I said so," which brought to my recollection that *he had actually* mentioned that sum at the first consultation, the day before he invited me to his house to listen to some proposition from the opposite party. I took no notice of it at the time, supposing he had not yet made himself master of my case. He must not however flatter himself with being the only prophet in court, as I myself would have made the same prediction, if I could have foreseen the statement laid before the Jury, from whom I scarcely could expect, and certainly did not expect, higher damages, after the charge of the noble judge was concluded.

MOTION FOR A NEW TRIAL.

MOORE *versus* ADAM.

Copy from Mr. Gurney's Short-hand Notes of the Proceedings in the Court of King's Bench, *January* 26, 1816.[1]

Lord Ellenborough. There is a person who has sent me a note this morning,[2] stating

[1] It would be trifling with the common sense of mankind to observe minutely on the following proceedings; they make a fit finale to the rest of the business. But I must protest against the license in which his Majesty's Attorney-general indulged: I did conceive that he had no right to interrupt me, or that he did not form any part of the Bench I was addressing, and yet he attempted to keep up a running fight; and it appears that Lord Ellenborough scarcely said a word without Mr. Attorney (for this I discovered to be his appellation) adding some remark of his own. He did not content himself with the remarks which Mr. Gurney has given, but being at my elbow, favoured me with some indirect ones, which I suppose were intentionally *sotta voce*. Among other things, he said that the person who had written the argument had

that he shall move himself for a new trial. If he wishes to move, he may as well do it

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taught me how to read it. I do not know what seminary of politeness has had the advantage of having had the learned gentleman for an *elere*, as he has yet only favoured me with the name of the school in which his son was educated I was, however, additionally prepared to appreciate the man by hearing a little before an exordium of his in moving for a new trial; it was a curious mixture of affectation, of independence of the merchants of London, and of pretensions to their favour, which might be thus interpreted:—I rely upon their fears of me to get their briefs; but if by the help of a little coarse flattery, I can get them endorsed with fifteen instead of ten guineas, I calculate that the difference "in many and many a year to come," will make a large sum, which I will take care not to lay out in a bad speculation in house-building for some future *learned* gentleman to cite as an epoch in the history of our country.

It is to be hoped, that when the London Institution has produced some of the benefits held out by Mr. C. Butler in his eloquent inauguration speech, the merchants of London will require a more polished bait.

* My letter was to his Lordship's clerk as follows, and was sent at an early hour the day before.

"63, *Montague-square, Jan.* 25, 1816.

"Sir,

"I beg leave to inform you, that it is my intention to move in person, in the Court of King's Bench

now. He had counsel at the trial at Guildhall; but if he wishes to move himself, he is of course at liberty to do so.

Mr. Moore. My Lords, previous to moving for a new trial in the case[1] of Moore v.

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to-morrow, for a new trial in the cause Moore v. Adam, tried at Guildhall, before Lord Ellenborough and a special Jury, on Thursday, the 21st December last. Upon two grounds that evidence was admitted that ought not to have been admitted, and the misdirection of the Noble Judge who presided at the trial.

"I think it my duty to give you this notice, to be respectfully submitted to his Lordship, in order that his Lordship may be provided with the notes his Lordship took at the trial, if such should be his Lordship's pleasure.

"I have the honour to be,

"Sir,

"Your most obedient humble servant,

"THOS. MOORE."

[1] Before I had got even thus far, I was interrupted two or three times; I was asked my name, which would have been a natural question from either of the other two learned Judges on the Bench, as his Lordship had not condescended to mention it, but it came from his Lordship himself. I was also told that I had not mentioned in what cause I was moving; and the Attorney-general also made his remarks.

Adam, in which I was Plaintiff, I shall be perhaps excused for shortly stating my reasons for making this motion personally, instead of availing myself of the assistance of a learned counsel. As soon as the writ was issued, I gave directions to my solicitors to retain the Attorney and Solicitor-generals. Being informed that they had been retained by the opposite party, I requested my solicitors to retain Mr. Sergeant Best, considering him to be an intelligent, independent, and zealous advocate, who would perform his duty, without being biassed by any other consideration. In consequence, however, of what passed at the first consultation, and of other circumstances which subsequently came to my knowledge, I became extremely apprehensive that the learned Sergeant would not state my case in the way that I wished, or was necessary in my opinion for the success of my cause.

Lord Ellenborough. You must not make the opportunity afforded you of moving for a new trial, a vehicle of slander.

Mr. Moore. No. I do not mean to do that.

Lord Ellenborough. You had better leave out such things as that. Direct your eye forward a little, and use only those parts which may be advantageous to your case.

Mr. Moore. I was therefore anxious that he should not lead.

Lord Ellenborough. See how much you attend to what I said. That is slander upon your counsel. I cannot suppose that a gentleman of his high rank in the profession, or indeed any gentleman in the profession, would give up his client; nor is there any cause for the reflections cast upon him, to the best of my recollection.[4]

Mr. Attorney-general. There was no failure of zeal or ability on the part of Mr. Sergeant Best. The Plaintiff was certainly much indebted to his counsel.[5]

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[4] If the learned Sergeant did conduct my cause so well, my having been anxious before the trial that he should not lead, would only, in my humble opinion, be a proof of my folly; how it could be slander upon him, I really cannot discover.

[5] As to Mr. Attorney's opinion, which he gave unasked, I suppose he gave it here for the sake of effect upon the Bench, as he could not hope to convince me by eulogizing my Counsel; but I certainly thought that Lord Ellenborough, in the course of subsequent interruptions I experienced, assured me in direct terms, that Mr. Sergeant Best had conducted my cause very well, as I might have known if I was in Court, for I was surprised at the time how it was possible for him to know whether he did or not, without having seen his brief. I also heard his Lord-

Mr. Moore. On inquiry I was informed, that being next in rank to the Attorney and Solicitor-general, there was no counsel who could lead him; and that having been once retained, no other professional gentleman would lead. Being therefore obliged to submit, the learned Sergeant did lead, and my worst fears were more than verified. He stated to my great injury what was not in his brief, and left out what could serve my cause, without attempting to prepare the minds of the court or jury for that which I conceived the most important part in the cause. These being my feelings, it was impossible I could call on the learned Sergeant to make this motion, and presuming the same etiquette operates in this case as in the other, I did not think it right to trouble any of the learned gentlemen. I move, my Lords, for a new trial in this case upon two grounds. The first is that evidence was admitted that by law ought not to be admitted: the second is the

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ship say, "perhaps the best way is to let him go on;" which, although it sounded in my ear like "give him rope enough," I was much pleased at hearing; for, as I knew I would not make bad use of the rope, I was relieved from the fear I began to entertain that I would not be permitted to proceed at all.

misdirection of the noble Lord who presided at the trial.

Mr. Attorney-general. Your Lordship knows that all the evidence that was admitted was his own.

Lord Ellenborough. There was no evidence but for the Plaintiff.

Mr. Attorney-general. And the gentleman conducted his own cause, and marshalled his own evidence,[s] for which I was under great obligation to him.

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[s] To this I can only say that it is "absolutely false." I do not know by what rules of propriety persons within and behind the Bar are governed; but there were three or four of my Counsel (at Guildhall) present, who might have politely contradicted him. I interfered in no way whatever; but when Sergeant Best urged Mr. Lowten to drop the special damage, I told him by no means, and to examine every witness, it was only because Mr. Topping urged not to call any witness after Mr. Strange; and Mr. Lowten begged me to be ruled by my Counsel, that I submitted. A little before it came to my turn to make the motion for a new trial, Mr. Attorney, seeing me rising, and taking out a paper from under my coat, asked me very politely, and as if I was an utter stranger to him, whether I had any thing to move myself? to which I answered that I had. Perhaps, however, the learned Gentleman piques himself upon being a good actor as well as a great advocate.

Lord Ellenborough. You will recollect that there was no evidence but on your own behalf, all the facts which made for the Defendant were exhausted on the cross-examination of your witnesses.

Mr. Moore. The abstract of the evidence which I shall read to your Lordship is taken from Mr. Gurney's short-hand account of the trial, which I presume to be accurate, and will be found to agree with the notes taken by the Noble Lord who presided at the trial.

It will be within his Lordship's recollection that I brought an action against the Defendant, at that period a Colonel in the British army, and Adjutant-general at Alicant in Spain, for an assault committed upon me by a Sergeant in the British army who was commanded so to act by the Defendant. The declaration also stated that in consequence of this violent outrage I found myself compelled to leave the town of Alicant, and to suspend my mercantile concerns, which I have never since been able to re-establish. In support of my case my counsel called first Sergeant Power, who stated in substance that he was a Sergeant in the 58th regiment of foot, that in December, 1812, he was in Alicant in Spain, that British and Spanish troops were in Alicant, what number he could not tell, there were not many

quartered in Alicant, they were quartered in the neighbourhood; the witness was assistant clerk to Defendant, who about the latter end of the year asked him whether he would beat a man for him, that witness said, Yes, Sir; that shortly afterwards Defendant asked him to go with him, that Lieutenant Roquefeuille and another officer accompanied them. He was not sure whether Mr. King was with them or not. It was within an hour after Defendant asked him whether he would beat a man that witness saw Lieutenant Roquefeuille and the other officer; they went to Mr. Moore's house, did not exactly recollect how they got in; they went to Mr. Moore's room, he was alone writing, Colonel Adam took a paper out of his pocket and asked whether he was the author of it? Mr. Moore said it was his hand-writing, but he did not mean it to Colonel Adam. The paper was not read aloud; Defendant then asked Mr. Moore why he refused the Rev. Mr. King a billet? Mr. Moore said it was not lawful, nor that no person was authorised to billet any person in his house; General Adam said he would give his quarters to Mr. King, and he himself would remain in Mr. Moore's house; Mr. Moore replied he would not let General Adam or any other person remain in his house ex-

cept by force: Mr. Moore also added, if by force of arms you take possession of my entire house, I shall leave it, otherwise you nor any other person shall not remain in it; Gen. Adam then ordered me to lay on him. I had a stick in my hand, I seized Mr. Moore with my left hand by the collar, and beat him about the shoulders with a stick which I had in my right hand; after giving him three or four blows the General said, "Stop, Power."—I did so directly, the two officers staid in the room during the time. After this assault witness recollected being sent by Colonel Adam to Mr. Moore for a key, he recollected Mr. Budd being in the house, witness put Colonel Adam's name upon each street door, Colonel Adam slept at Plaintiff's house.

The witness had been four or five months at Alicant before the assault. The evidence, the substance of which I am now about to read, I hope to convince your Lordships ought not to have been received. "The witness stated Mr. Moore's house to be a splendid and large establishment, and that he could have accommodated the Chaplain and other officers without the least inconvenience, without putting himself to half the inconvenience which the inhabitants of Alicant were suffering at that time. His Lordship then asked could

he have received any persons without suffering a greater degree of inconvenience than the inhabitants of Alicant in general endured. The witness answered I think he could, he could have continued in his own house and have given quarters to Colonel Adam and the Chaplain without inconvenience to himself; both doors were barricadoed. Lord Ellenborough again says I think you said you afterwards got a party to remove the bank." The object of that part of the evidence which I have just read to your Lordships, must have been either intended as a justification for the assault, to the *count de bonis asportatis*, or it must have been intended to operate by way of mitigation. It will not, I believe, be disputed, that no person unless allowed by act of parliament, can give in evidence a justification under the general issue.—It must be pleaded.

Lord Ellenborough. There is no doubt of that; it must be pleaded if it is meant to be given in evidence in defence to the action.

Mr. Moore. For this position I beg leave to refer your Lordships to Watson *v.* Christin, 2 Bosanquet and Puller, 224. Mostyn *v.* Fabrigas Cowper, 173. It would be useless to insist upon the wisdom and necessity of this rule of law, but I will venture to state

that had a justification been put upon the record to the *count de bonis asportatis* which was inserted expressly to enable the Defendant to justify; it must have been either on the ground that the Defendant took possession of my goods under a legal billet, or that he was obliged by necessity to take possession of them. In the first case I was prepared to prove that the billet was not legal, and in the second that no necessity in fact existed. The latter part of the evidence of the Sergeant is sufficient to prove that I am correct; for upon being asked by the Attorney-general whether the Chaplain occupied that room at the Adjutant-general's which Colonel Adam had left unoccupied, he answered that he did not recollect that he did; which proves that there was no necessity to force a billet for Mr. King at my house, and it also proves that Defendant could have no legal billet, he being already provided with quarters which he had occupied for many months; but I shall not any longer trouble your Lordships on this part of the subject, for I believe no point of law is more certain than that a justification must be pleaded. Was it then intended as a mitigation? Were these facts proved.

Lord Ellenborough. There was no witness called on the other side; all which ap-

peared came out on the cross-examination of the witnesses for the Plaintiff.

Mr. Attorney-general. I wish, my Lord, I could consent to a new trial; this gentleman would not have *5l.* given him another time.

Mr. Justice Le Blanc. The Plaintiff has not told us how the verdict was.

Mr. Attorney-general. He is moving to set aside a verdict in his own favour to the amount of *500l.*

Mr. Justice Le Blanc. I thought the verdict had been against him.

Mr. Attorney-general. I do not wonder your Lordship thought so, but he had a verdict for *500l.*, *499l.* more than he would get if he went to trial again;[6] he is moving to set aside his own verdict.

Lord Ellenborough. The counsel for the Defendant very properly renounced all defence to the assault, and merely submitted observations in mitigation to the lenient consideration of the Jury. The Plaintiff endeavoured to bring in damages for the loss of his

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[6] If Mr. Attorney thought he was speaking the truth, I think he ought to have engaged his client to raise the interdict upon the daily press, and let the public judge on the question as well as himself.

establishment, and all his commercial advantages at Alicant, saying, that after having been beaten he could not creditably and comfortably carry on business there; as to which, I stated to the Gentlemen of the Jury, I recollect stating, that if a man had been beaten ever so injuriously on the Royal Exchange of London, that was no reason, in my opinion, why he should move his commercial establishment to Amsterdam, and charge the Defendant with all the loss on that account.

Mr. Attorney-general. The allegation was, as your Lordship will recollect, that he drove him out of Alicant, not that it was the remote or even necessary consequence of what he had done—your Lordship at first supposed that he had put him under a file of musketeers and marched him out of the town.

Mr. Moore. Were these facts proved it could only be insisted upon on the ground that I was a man who stood on what I considered my legal rights—what mitigation is that? or it must be contended that my having a house to myself was a sign of a churlish disposition. If this were as true as it is false, yet it would not be admissible evidence, because neither the character of the Plaintiff nor of the Defendant can be given in evidence

in an action like the present; for this position I beg leave to refer your Lordships to the Attorney-general *v.* Bowman, 2 Bosanquet and Puller, 532—Goodright *v.* Hicks—Buller's *Nisi Prius*, 296.

Would my counsel, my Lords, have been permitted to go into evidence in aggravation, and shew that the Defendant was considered as a haughty, insolent, and tyrannical man, whose head had been turned by his rapid, improper, and undeserved promotion.

Lord Ellenborough. You must not, when you are complaining of an injury, do an injury to others; the court cannot permit you to describe the promotion of the army as a "rapid, improper, and undeserved promotion."[7] You began with a libel upon your

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[7] If the Defendant himself had taken an hypothetical argument for a statement of fact, I might have said, "let the galled jade wince;" but to his Lordship I can only respectfully repeat what I twice stated at the time, but which the "*few roulant*" kept up by Mr. Attorney, probably prevented Mr. Gurney's hearing. "I have not said that it was so," and how could I give any opinion on the subject? for although I had read, with perhaps more attention, as having more leisure than his Lordship, the Gazettes of Europe for twenty-five years, I do not recollect having seen the name of the Defendant in them before the assault; since that

own counsel, and now you are entering upon a libel upon the army, and upon those under

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time I have seen it returned as wounded upon two occasions; but I have seen nothing beyond common-place phrases respecting him, and nothing to distinguish him from the thousands on the same return with the same kind of merit. I did indeed hear it given in evidence at Winchester, that Colonel Adam, at a time that the allied army before Tarragona was nearly in a state of insubordination, took upon himself to lecture his commander-in-chief, Sir John Murray, upon his military duties, in the presence of two general officers and others, and I heard the persons about me wonder Sir John did not arrest him upon the spot. How would one of the French Marshals, whose supposed mode of taking quarters the Colonel so much admired, have acted upon such an occasion; Suchet, for example?

The word libel, in England, seems to be used as an argument *in terrorem* to me, like the word heretic in Spain, in the good old times so happily returned. Before the Revolution, I knew a holy friar belonging to the convent of Orito, a capital hand at a guitar, who was so alert in taking off his vestments after mass, as to overtake his audience going out of church, and tell them smutty stories. This friar, instead of a breviary, carried a dagger and a brace of pistols in his sleeve, and boasted, that though he had made a vow of mortification, he had resolved never to mortify himself, except when he occasionally put on tight

whose advice the promotion in the army takes place.

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clothes to disguise himself to go to the play. Yet this consistent gentleman, when pressed in argument, talked to me as big as any body of heresy, of my sentiments being those of Voltaire, &c., &c.; because he well knew that if I persevered, the persons present would have thought themselves bound in conscience to denounce me to that venerable institution the Inquisition. I found afterwards that this was a general use of the word among those who could not hope to convince by the united power of truth and reason.—In the same way, a "servile" member of the Cortes stopped my mouth at a testalia at Cadiz, at the Countess de Bureta's, by telling me the Council of Trent had decided, that the Vulgate, or Latin translation of the Bible, was of greater authority than the original.

Even Mr. Attorney talks of *my* libelling *him*. Was the charge against me of libelling intended to afford an excuse to the Editors of the daily press for leaving out any notice of the proceedings in this case? But perhaps the Editors all volunteer, from their patriotic admiration of a man with whose name they have become familiar in reading the Gazettes of their country, not to let the world know, that one who has done well, should at any time have done ill. I understand, however, that Mr. Attorney was not quite so tender of the reputation of a military man, in the case of Sir Thomas Picton; but that he favoured the

Mr. Attorney-general. There was no evidence offered by this gentleman either rejected or objected to—no evidence which he desired to introduce was shut out; on the contrary, I have to give my thanks to the gentleman for having marshalled his own evidence.

Mr. Moore. That on the contrary I had always acted up to the character of a British merchant; that I did not owe my success in life to any disgraceful intrigue, but to my own industry, honour and perseverance; that I had largely contributed to the resources of Great Britain, without which the services of the Defendant would have been unavailing, were they as great as they were pretended to be; could my counsel have shewn that nothing was so likely to cause the destruction of that army, of which the Defendant was a principal officer, as the brutal and tyrannical conduct of the Defendant towards one of the

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Court and Jury with the Torture, &c. &c., which the daily papers communicated to the public. Mr. Sergeant Best would not consent, when tendered to him by my Solicitor at the trial, to produce a plan of the principal floor of my house, in which the rooms taken possession of on the 16th, two days previous to the assault, were clearly marked.

principal merchants of the town. If such evidence on my part was not admissible it was admitted against me, and this alone will, I am convinced, induce your Lordships to grant me a new trial.

My Lords, I shall now take the liberty of directing your attention to the evidence of Mr. James Budd, " who stated, that previous to Plaintiff's arrival at Alicant Spanish officers had occupied both of Plaintiff's houses. The house of residence was a small one in comparison with the mercantile house. He was present when Colonel Adam, Sergeant Power, Lieutenant Roquefeuille, and another, whom he did not know, went into Plaintiff's room whilst the Rev. Mr. King remained on the staircase; he saw Colonel Adam shew Plaintiff a paper, and ask him if it was his writing; witness then went into another room—heard some blows given —returned, and the room-door was shut; there were four soldiers in Plaintiff's house of residence about half an hour before the assault; there had been four soldiers there the two nights before the assault; he did not remember that any body resided there but Captain Pearson, from November till the period in December, when the assault was committed; after the assault Colonel Adam

snatched the key of the bed-room out of witness's hand; Plaintiff went from Alicant the day after the assault to a convent at Orito; witness thought Plaintiff could not conveniently have remained in Alicant to carry on his commercial affairs, because he would have been looked upon as a very despicable man if he had staid there, because he had been beaten in that manner. One or two days before the assault quarters had been demanded for Mr. King; billeting was regulated by the Spanish government; Plaintiff to his knowledge had been absent from his establishment two or three years; witness knew he refused the Chaplain; did not recollect Plaintiff's saying that no person had a right to billet upon him, except by force; witness had seen several things from Plaintiff in the Diario; witness did not know that Plaintiff published an advertisement about British deserters; never heard it from Plaintiff he wrote about British deserters; he never told witnes that he had written an advertisement about British deserters: remembered his talking about deserters, but did not recollect what the words were; he did not mention an advertisement; he did a letter of some sort or other; understood it was sent to the Adjutant-general's office before the

assault, after the guard came into his house; witness recollected his talking about deserters, but did not recollect what the words were; could not say whether he copied the letter or not, but believed he did not; Colonel Adam brought a paper, and asked Plaintiff whether it was his hand-writing; witness did not know from Mr. Moore that the paper he brought was that which he sent about the deserters; he thought he did not carry the paper about British deserters."

I must trouble your Lordships with some observations with regard to evidence given by this witness as to the size of my house, and how many officers had been billeted in it.

Lord Ellenborough. Why if you produce a witness he must be cross-examined; what are you arguing for, I do not so much address myself to you as to those who must have advised you in the composition of this paper, for it certainly is not your own.[s]

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[s] I most respectfully submit to his Lordship, that it does not require so very recondite a knowledge of the law as his Majesty's very learned Attorney-general doubtless possesses, to answer this objection. It appears consonant to law, justice, and reason, that evidence that cannot be admitted in chief, should not

Mr. Moore. I hope I have proved to your Lordships, in the argument that I made on Sergeant Power's evidence, that such facts, if true, were not admissible, and that the con-

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be admitted on cross-examination. It would be ridiculous to say, that on cross-examination, parole evidence of a written paper may be obtained, or that in an action of the present description, a witness might be asked whether Plaintiff was an adulterer? If this be admitted, then the argument stands thus:—No justification can be given in evidence, if the evidence given went to shew that the entry into my house was justifiable to enforce the billet of Mr. King; it might have been pleaded, therefore, it could not be given in evidence. But were it to be considered as evidence in mitigation, I contend that nothing but what occurred at the very time, or was intimately connected with the assault, could be so given in evidence; and that in this case, neither the character of Plaintiff or Defendant could be so given. I contended on this occasion, that my character was attempted to be given in evidence, and was proved to have been given in evidence by his Lordship. I also contended, that matter of justification was given in evidence, and that evidence of facts not in the least connected with the assault, was admitted, tending merely to the purpose of prejudicing the Jury against me. I have heard nothing to shake my opinion upon this subject. The public has now the whole of the proceedings before it, and to its impartial judgment I appeal.

clusion intended to be deduced from them was erroneous; your Lordships will perceive that the Attorney-general's object, in pursuing this course of examination, was to paint me to the jury as a man who was so churlish and unfriendly to the allied cause as to refuse to bear an equal share of the burthen of affording the soldiers even a cover for their persons. In the hands of almost any advocate the effect of these questions must have been very great; but when managed by an advocate of the peculiar talent of his Majesty's Attorney-general, your Lordships will readily conceive the effect it must have had on the minds of the Jury. My Lords, if this evidence was improperly admitted, I have not had a fair trial; my character has been grossly calumniated by means of evidence I had not the opportunity of contradicting, and to your Lordship's justice I appeal to enable me, by means of a new trial, to shew that these insinuations were utterly untrue, or if that cannot be done, at least to deprive my adversary of false and illegal evidence. But, my Lords, that part of this witness's evidence to which I wish principally to attract your Lordship's attention, is that part where he is asked as to the contents of the letter presented to me by Colonel Adam. I believe, my

Lords, it will be readily admitted to me, that the contents of a written paper which can be obtained, cannot be proved by parole evidence. In fact, my Lords, it would be impossible for any witness to recollect the exact words of a letter, and the most trifling word often changes the entire sense. But even were such evidence admissible (although the Defendant was in possession of the letter, and although it was impossible that it could be made evidence on my behalf) merely that my counsel might not have a reply, yet, my Lords, surely there is nothing in this witness's evidence that can give the least idea of what was contained in this letter. If his Lordship, therefore, in his address to the Jury, assumed the contents of this letter to be of a libellous nature or a rude communication, I feel myself authorized to ask with confidence for a new trial.

Lord Ellenborough. Did the judge whom you point at state that it was of a libellous nature, or designate it as any such thing.

Mr. Moore. I will read it, my Lord. Upon the passages in his Lordship's direction to the jury which I am now about to state to your Lordships, I rely to shew that his Lordship did allow the jury to suppose that the substance of this letter was in evidence; for

his Lordship says: "It is admitted he was a writer in the Diario, and some paper or other is produced to him by Colonel Adam, when he pays the unfortunate visit to him on the 18th of December. The worst part of the conduct of Colonel Adam is this, that before he paid the visit he had asked the Sergeant whether he would beat a man for him. That is the part one views with most concern; for he had gone with the purpose of beating a man, at least with the suspended purpose of beating him, and therefore that purpose must be referable more to some supposed matter of a libellous nature, or to some rude communication made to him, than to what arose out of the communication he had with him." His Lordship, again speaking of this letter, says: "Therefore of course he made himself privy to the contents of the paper, and is the person who was so far instrumental to its publication." In another place his Lordship says: "But unfortunately irritated by some publication which he supposed to be directed against him, or some contumelious letter." My Lords, in my opinion the noble Lord must have thought that there was some evidence of the contents of this letter shewing it to be libellous or contumelious.

Lord Ellenborough. The contents never

came out; but in disputing about a letter he shewed it you, and asked whether it was your hand-writing; that shews therefore that the letter was the grievance with him.

Mr. Attorney-general. And your Lordship urged that against the Defendant.[9]

Mr. Moore. But whether that was his Lordship's view of it or not, it is quite clear that from his direction the Jury must have understood that there was evidence to shew that the contents of the letter were contumelious or libellous. Were such evidence admissible, who could be safe? Defendant presents a letter to me; I say that it is my hand-writing, but not meant to him; he then orders the Sergeant to strike me. There is not the slightest evidence given of the contents, and yet the Jury are directed to presume that the contents were libellous or contumelious. And, my Lords, for what purpose is this breach of all the rules of evidence; the best safeguard of our lives, fortunes, and liberties? It cannot, my Lords, be too often repeated, for the mere purpose of preventing my counsel having a reply. My Lords, if I am correct in the legal part of my argument, that no parole evidence can be given of a written do-

[9] When; and in what way?

cument if the party can produce it, and that the noble Lord in his direction to the Jury gave them to understand that the contents were libellous or contumelious, although in point of fact there was not a scintilla of evidence as to its contents; I feel, my Lords, I have laid the firmest foundation for my demand of a new trial in this cause, and that it can be scarcely necessary for me to trespass on your Lordship's patience any longer.

His Lordship then goes on to state: "It is very material to repel the aggravation, because this would be a malicious selection, if this gentleman was picked out to have persons billeted upon him; if this was a common distribution of the burden it would repel the inference arising from such act." On this occasion again the noble Lord gives the Defendant the advantage of justification. I hope I have already shewn that if the billet was legal he could and ought to have justified. I did not complain of the billeting, because by the law of this country I could not; but if the Defendant was legally authorised, he might and could have justified. On this subject I beg to refer your Lordships to what Lord Mansfield says in Mostyn *v.* Fabrigas, Cowper, 173. "It does not follow from hence, that let the cause of action arise where it

may, a man is not entitled to make use of every justification his case will admit of, which ought to be a defence to him. If he has acted right, according to the authority with which he has been invested, he must lay it before the court by way of plea, and the court will exercise their judgment, whether it is a sufficient justification or not. In this case, if the justification had been proved, the court might have considered it as a sufficient answer; and if the nature of the case would have allowed of it, might have adjudged that the raising a mutiny was a good ground for such summary proceeding. I can conceive cases in time of war, in which a Governor would be justified, though he acted very arbitrarily, in which he would not be justified in time of peace; upon proper circumstances laid before the court, it would be very fit to see whether he had acted as a governor of a garrison ought, according to the circumstances of the case."

I have also shewn that my conduct as to billets could not have any effect in mitigation, for it could only be character which I have already shewn not to be admissible.

The next witness to whose evidence I must call your Lordship's attention is Austin Moran, which is in substance to the following

effect:—He proved that Mr. Moore was with the workmen on the 16th of December at his mercantile house; that Colonel Adam came there and addressed him in a very high tone of voice, and said that he had forced his way into his house; he threatened Mr. Moore with personal chastisement if he put any thing in the Diario respecting him, Colonel Adam. In the mercantile house there were four military persons billeted; in short all the house was occupied by military men. It was by virtue of the Spanish Authorities that persons were billeted on Mr. Moore and other persons. Mr. Moore left Alicant a day or two after the assault; he did not think Mr. Moore could after what had occurred remain and carry on his mercantile business as before. His Lordship says "what were the reasons?" the witness answered because to carry on his business he required the use of his mercantile house; the witness did not think he could have been able to carry on his business with any success. His Lordship then says "the allegation I see is that he was compelled, and compelled the said Moore then being a merchant carrying on business to quit and leave Alicant, from which I knowing nothing of it but from the record, had supposed there had been an order to him

to quit, and that he had been put under a sort of military execution and turned out of the town; but one witness says he quitted because he was disgraced. Some things may have enough of them in themselves, but by endeavouring to tack on that which does not belong to them, that which is substantial may be injured." My Lords, when this action was commenced it was my wish to hold the Defendant to bail, and I thought myself justified in making an affidavit that I had sustained pecuniary losses amounting to more than ten thousand pounds in consequence of the conduct of the Defendant.

Mr. Attorney-general. The damages were laid at 30,000l.[10]

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[10] And they ought to have been laid higher, as will appear by the annexed estimate made out by Mr. Strange, and which ought to have been annexed to the Brief:

"In my opinion Mr. Moore has lost, by being obliged to give up the concern, a sum not under 40,000l. to 50,000l. To place the house on the footing it stood previous to its suppression, will under any circumstances be difficult to effect for a number of years. I suppose six in all, that is, three years idle, and three for re-establishing, and from my calculation thereon by the following statement. On an average from six

Mr. Moore. It is certain that I am injured much beyond the amount of the damages laid

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years back, from 1807 to 1812 inclusive, the house's profits were 35,000ds. per annum, amounting for the six years to 42,000l."

Debts of George Moore and Co. taken by Mr. Moore under 30th June, 1812, will now be of very difficult recovery, if recoverable,	f. 11,178	6	6
Loan of George Moore and Co. to the Spanish Government —	5,000	3	10
Rent due by ditto to ditto —	1,524	11	7
	f. 6,524	15	5
A great deal of which would have been recoverable through the Custom-house, had the business long continued, I suppose	3,000		
Mr. Moore advanced in 1812, to the Spanish Government and Hospital — — —	4,513	5	8
Ditto to ditto account of subscription Loan — — —	1,333	6	8
Together making 5,846 12 4 which by his absence, not having been able to attend to in proper time for recovery, will most probably prove a total loss	5,846	12	4

in the declaration, which injury was wholly and entirely caused by the Defendant, whe-

Amount of 144 pipes of wine which the Chamber of Commerce paid to a patron (the seller) out of the produce of fish taken forcibly from Mr. Moore's store in his absence, with a hearing, on a supposition that the Custom-house had confiscated said parcel lawfully, to protect which Mr. Moore's presence and attendance was necessary — — —	7,5[illegible]	7	4
Damages sustained in fixed property, such as houses, buildings, and rent dues on, 80,000 for three years, which are in the same predicament, that is, for want of Mr. Moore's interference — — — —	6,000	0	0
Besides the foregoing sums, I know that Mr. Moore since December, 1812, is in disburse for amount of his demand on Mr. Daniel for wine not recovered, being about — —	3,000l.	0	0
Ditto, ditto, for amount of fish forcibly taken from his stores in Alicant, during his absence in December, 1812, and which is still depending, being some	3,000l.	0	0

ther the loss was the consequence of my folly and imprudence, or necessarily resulted from the wanton and unprovoked outrage of the Defendant was the question I wished the jury to decide. Perhaps I will be excused in stating as an argument to shew that I was not actuated by any vain fears in leaving Alicant, that Mr. Sergeant Best unequivocally declared at the last consultation I was at, that under similar circumstances he would not have remained, although on this occasion the learned Sergeant said immediately after what fell from his Lordship:—"Perhaps I may give offence in some quarters, but I have always felt that." Whatever the learned Sergeant meant by the remark, it certainly must have led the jury to suppose that in his opinion I had no right to recover special damage. I understand no such remark was ever made by counsel, at least until a trial was concluded. This will, I think, convince your Lordships that it was quite impossible I could request the assistance of Mr. Sergeant Best on this occasion.

Mr. Justice Bayley. I suppose there can be no question upon that, no lawyer would say you could go into special damages on such a declaration."

" If Mr. Justice Bailey's objection be to the form

Lord Ellenborough. Mr. Sergeant Best is not for the sake of a particular cause to

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of the declaration, it is not my fault, as I had it settled by the first special pleader at the bar, as I was told.

If to the special damages, I think it right to state, that on the 25th of November, 1814, I made an affidavit to hold the Defendant to bail in 10,000l. before Mr. Justice Bayley, that is to say, I have it certified under his hand that I did so, but I did not see the Judge who I was told was in an adjoining room, which his clerk would not let me or my solicitor into, but after receiving his fees for the affidavit he brought out word that the judge would not hold Defendant to bail, and that he supposed it was some dispute about billeting or quarters. I assured him it was no such thing, but he insisted that the judge would not hold him to bail unless I swore to personal or bodily damages. I asked him what he meant, and he told me doctors or apothecaries bills, &c.; upon which we departed. On the subsequent day, Mr. Adam, barrister, and brother to the Defendant called upon be in Montague-square, I told him I was a little surprised at his visit, as he might for what I knew take some advantage from what I said, but that as I only would state the truth, and had no personal feeling on the subject, I did not fear any thing that could be done. I then briefly expressed to him my astonishment at Colonel Adam's conduct, and stated the circumstances attending the assault, when I told

contend that to be law which his own good sense and better information would inform him could not be contended on any legal principles.

Mr. Moore. The last witness examined was Mr. P. Strange, the substance of whose evidence was that he was of opinion from the state of Plaintiff's house, and of Alicant at the time of the assault, Plaintiff could not have continued there after 18th December. The profits of the house were more than 7000l. per annum, he thought he could not carry on

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him he had said to me that he understood I was, or pretended to be mad: he answered, "I wish he had had his senses about him," upon which I said he was the last man I could have expected such conduct from, and added that if he had been instigated to it by others, he could easily prove it, or words to that purpose; but finding he did not avail himself of this opening to say that it was so, I got up saying, "then I must ascribe his conduct to mere insolence," to which he hesitatingly said, no, not mere insolence, and adding that he must have some more conversation with his brother than he had yet had; he went away uttering in very civil terms a threat, that in defending his brother he would not permit any feelings of delicacy to interfere, but would state matters that would be very distressing to me personally.—Thank God, nobody can do that.

his trade to advantage after 18th of December, because his character as a tradesman must have suffered considerably by his allowing himself to be beaten, and by its being supposed his character deserved it, by his being beaten and treated not like a gentleman, he was not master of the customs of England, he had not been in this country, he should think he would not be obliged to leave London, because in this country justice might be obtained; he could have cleared up the matter to the satisfaction of his friends in London. It must have been supposed that Plaintiff had committed some heinous offence, he never communicated any thing to witness on his private business. He proposed to me in consequence of the circumstances that were occurring, instead of a new partnership we had agreed upon from the year 1812, to take the whole upon his own account in consequence of his being likely to get into litigious disputes, those disputes were about the protection of himself and his property from injustice and malpractices. He wished to have justice done him according to the constitution, he saw that things were carried on in an improper manner, and that justice was not administered equally or fairly. His complaint was against the authorities who had seized all

his fixed property, and put the soldiers and not putting the burthen equally. Witness did not know from Plaintiff that he wrote any thing in the Diario, he did not convey his ideas to any body, at least not to witness, that is his general character; he said he would exclude the witness from the house because they did not exactly agree in their manner of thinking; he thought I was of two condescending a disposition, that is, that I submitted too readily; he was determined to resist those malversations according to the letter of the law, he did not communicate to witness that one of the malversations he complained of was the billeting soldiers. His Lordship then says "it is the only particular you specified on which he complained of the malversation of authority, that he complained of the authorities having taken possession of his property by billeting soldiers, and not laying the burthen equally;" the witnes ssaid that was the reason he gave him for taking the partnership upon himself, he did not give witness his reason, he merely expressed his wish. Plaintiff was a supporter of the authority of the Cortes. The opinion witness gave was in consequence of being conversant with the state of the manners in Spain. The Plaintiff had not the

means of making his case known at Alicant which he would here. His Lordship says the difficulty he stated was the political difficulties he was engaged in, particularly on the subject of billeting.

My Lords, I shall not trouble your Lordships at much length upon the subject of this witness's evidence, as it would be merely to repeat again the objections I have made, to attempt to give my character in evidence, in order to mitigate the Defendant's conduct. My Lords, what could my reasons for wishing the witness to leave Alicant, have to do with the question, unless it be contended that if a party be shewn to be churlish, narrow-minded, or have any other bad quality, the jury are to be told that he gave a person who beat him some very gross provocation, although if any such provocation were given the Defendant, he could have proved it as he took care to have three witnesses present at the assault, and to exclude all others.

Having made the observations that occurred to me on the question of evidence, I must now proceed to state my arguments for a new trial, grounded on the misdirection of the noble Judge who presided at the former one, and I conceive I shall be acting in the

most respectful manner by not taking up partial extracts from his Lordship's speech, but by going through the whole of it.

"Gentlemen of the Jury, The question which has occupied your attention for a considerable time is one which involves topics of a very serious nature, and which require in their discussion and consideration, a very discriminating judgment, and that judgment I know they will meet with. There are on the part of the Defendant, no doubt, many circumstances of conduct wholly indefensible. There are likewise on the part of the Plaintiff claims that cannot be maintained; it will be for you in the application of your good sense to the evidence given in this case, to give full effect to the claims which can be sustained, and to recompence the outrageous insult offered to this gentleman by adequate, fair, reasonable damages; at the same time not introducing into this case that which has been, I think, not discreetly endeavoured to be introduced; damages for the total destruction of the commercial existence of the Plaintiff who comes before you."

I have already attempted to prove to your Lordships, and I hope with success, that the total destruction of my commercial existence was caused by the Defendant's conduct.

" The Plaintiff is a merchant who appears to have been settled at Alicant, in Spain, and prosecuting his commercial concerns, we are to presume, with success. Having been absent from Alicant in England and other places for two or three years, he returns about October, 1812; at that time he appears to have thought that that which had been done for the necessary defence of the country, and for the necessary accommodation of the military, was done contrary to law, and to that he sets himself up with determined opposition. Now, Gentlemen, what country did he return to, and what had he left; he had left a country in which at the period of time when we must have supposed him to have left it, it was more than hazardous whether he would ever have a house or trade or any thing to return to."

Upon this I have to remark that no witnesses stated that I left Alicant since the beginning of the revolution, and in point of fact I left it in July, 1807, a year before the forced abdication of Charles the Fourth. I believe his Lordship will not find in the evidence that I set myself up with determined opposition to that which had been done for the necessary defence of the country, and for the necessary accommodation of the military. I have already proved as I hope to your Lordship's satisfaction, that if all that his Lord-

ship presumed in this passage had been proved, that notwithstanding it would not be legally available, but I hope I have also proved to your Lordships that it was not proved, and I am prepared to prove that it was totally false.

" In the meantime he finds that there are those who have baffled the attempts of the enemy; that his countrymen and the Spaniards are occupying Alicant, and every house in Alicant is receiving persons who are billeted upon them from the necessities of war. We will not go into the nice question, how far it might have been correctly and justifiably done without the production of a billet for this clergyman, but that they were actually billeted, and every house received persons under billet, and I think one of the clerks said there were least billeted upon Mr. Moore, upon which he must be taken to mean that they were in fact billeted upon all."

His Lordship again gives the Defendant the benefit of a justification, which I conceive I have proved to be false in point of fact, and of which if true the Defendant could not legally avail himself. His Lordship also says, persons were least billeted upon me. I believe it will not be found that any witness stated that; but A. Moran states that the

whole of my mercantile house was occupied, and it appears in evidence that compared to that house, the one I resided in was a small house, and it by no means appeared that I opposed, or was dissatisfied with its being so occupied.

" Prior to the time of this assault, which you will recollect was the 18th of December, there had been a communication between General Adam and Mr. Moore on the 16th, and there had something passed in communication to the Adjutant-general's office, or the newspaper."

His Lordship says, " that there had been a communication on the 16th, and that something had passed in communication to the Adjutant-general's office or in the newspaper." I believe the only evidence given on this subject was, that the Defendant called upon me on the 16th, told me he had forced my house, and that he would inflict personal chastisement if I wrote any thing in the Diario concerning him. If grossly insulting me, my Lords, on the 16th be a mitigation of beating me on the 18th, the Defendant certainly provided himself with that mitigation. It is only in evidence that a letter went to the Adjutant-general's office, and as to any thing in the newspaper it has not been attempted

to prove that I inserted a syllable that had the remotest reference to Colonel Adam, or for what appears in evidence any thing beyond regular advertisements respecting my mercantile affairs, and yet his Lordship goes on to say, "it is admitted that he had been a writer in the Diario, and some paper or other is produced to him by Colonel Adam, when he pays that unfortunate visit to him on the 18th of December. The worst part of the conduct of Colonel Adam is this, that before he paid the visit, he had asked the Sergeant whether he would beat a man for him, that is the part one views with most concern, for he had gone with the purpose of beating a man, at least with the suspended purpose of beating him before he knew what might pass in the communication with him, and therefore that purpose must be referable more to some supposed matter of a libellous nature, or to some rude communication made to him than to what arose out of the communication he had with him."

I must again beg leave to remark that this part of his Lordship's speech manifestly tends to lead the Jury to suppose that the contents of the letter were a mitigation, whereas I have shewn that the contents of the letter were not in evidence, and the mere producing

of a letter must appear a great aggravation. Sergeant Power declares Colonel Adam proposed to him an hour before the assault to beat a man for him ; he waited for the arrival of two officers to accompany him ; that he presented me a letter, and asked if it was not my hand-writing ; I said that it was, but was not meant to him. Is it not from this evident, that he hoped by means of this letter to procure some excuse for his intention of beating me, which according to the Sergeant he had only confided to him ; and that failing to do so by that means, he had recourse to the name of Mr. King, for the Sergeant says he does not recollect his being in the house at the time, and yet certainly he was not in the room, and if I had not been repeatedly and repeatedly assured that Mr. King's billet could not by any possibility be brought into evidence, I would have proved that I only objected to the illegal billet with which he was furnished, and that I did so exclusively for the benefit of the English requiring quarters at Alicant ; otherwise, for an ounce of gold, I could have prevented any billet on my house getting into his or Colonel Adam's hands, as also that I had specifically offered to accommodate him with a room, if instead of that illegal and unsigned scrap of paper he

brought me a few lines from the Admiral requesting it.

" I will now, Gentlemen, state that which passed ; and it is really to the credit" ——

Mr. Attorney-general. He is now resuming my Lord's summing-up. He professes to read the whole, but he breaks in upon it so as to make it unintelligible when he is reading it."

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[11] This interruption from Mr. Attorney must appear extraordinary without an explanation. When I began to read Lord Ellenborough's charge at the trial with my comments upon it, Mr. Attorney squared himself before his desk, and protruding the index of each hand, he appeared to spread with them on the desk an imaginary sheet of paper, parchment, or vellum, which he held steady with the sinister index, whilst with the dexter one displayed over his three-folded digits, he gracefully modulated lines on it according as I read the speech, and with fixed eyes upon his Lordship, gesticulated with his head his high approbation at such parts as he wished to make it appear were most correct and satisfactory to him, and I must confess he did it with much expression and animation. At this particular moment, he must have perceived in the noble Lord's countenance some sign of misapprehension, and with his usual quickness, he determined to act the prompter; for surely it was competent to the Bench to correct me if I was going on wrong. All this may be very

Mr. Moore. I am now resuming the summing-up. "It is really to the credit of the Sergeant, and of any person under whose supposed influence he may be, that he has spoken so openly. The learned Sergeant said he did

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correct; but I must take this opportunity of stating, for the sake of the interest I feel in the fair fame of British justice, "*clarum et venerabile nomen gentibus*," that the license in this way in which Mr. Attorney indulges, must have a very bad effect upon foreigners. A witness whom I brought from the Continent, "where such things are," upon learning the result of the trial at Guildhall, said it was not at all surprising, as it was evident the opposite lawyer and the Judge had an understanding, from the way in which they communicated by their looks. I assured him, that however things might have appeared to him, any supposition of the kind was quite out of the question in England. I am not, however, certain that he will not return in consequence with as false notions of English justice as his townsmen entertain of English military honour, or his countrymen of the English Government's love of liberty.

If Mr. Attorney be deprived of this display of talent in consequence of my hint, he may possibly feel inclined to bring an action against me, as I am confident one half of his briefs are derived from the license in which he indulges, and the false consequences drawn from his being permitted so to indulge.

not discredit the man; he took for granted he would give a fair testimony, and a fair testimony he has given,[13] not sparing his officer, to

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[13] It was not possible for his Lordship to know whether he had given a fair testimony or not; and upon reference to my statement, his Lordship will be able to judge whether he did or not. Upon his arrival at Portsmouth, he admitted the correctness of my statement, with the exception of the words used to him by Colonel Adam, ordering the assault, and desiring him to desist, and of Captain Owen having been present. How much his subsequent change "is really to the credit of the Sergeant, and of any person under whose supposed influence he may be," I leave others to decide. As to his not sparing his officer, to whom his Lordship says no doubt he is very honourably attached, I hope that Colonel Adam will make him some return for that honourable attachment now. He could not, however, have denied the assault itself without being proved guilty of perjury, as he had not only acknowledged it to others, but under his own hand, and this "any person under whose supposed influence he may be" knew full well. His commanding officer stated at Portsmouth, that Sergeant Power received several letters whilst in Canada from his wife under cover from Colonel Adam, and that the latter had entrusted a child of his to her care. Upon the whole, therefore, I cannot be surprised at the Sergeant's conduct; if he were independent, I sincerely believe I should have found him more honourably disposed than many of his superior

whom I have no doubt he is very honorably attached. He says: 'Colonel Adam asked me if I would beat a man for him; this was about two o'clock in the afternoon; my answer was, Yes, Sir; shortly afterwards he asked me to go with him; he did not tell me to what place; I accompanied him; there was a Lieutenant Roquefeuille went with Colonel Adam, and myself, and another officer, a Captain, whose name I do not recollect. I do not think the Reverend Mr. King was with us; there had been a doubt on my mind whether he was there at the time. Colonel Adam and myself were joined by the Captain and the Lieutenant at the Adjutant-general's office, but they were not there when he asked me the first question, whether I would beat a man for him, that was about an hour before I saw Lieutenant Roquefeuille and the Captain; Colonel Adam, myself, and these two officers, then went to Mr. Moore's house, which is about 150 yards from the office; I did not know the warehouse; I do

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officers up to the rank of general with whom I have unfortunately had to do. If he has been induced to injure me in giving his evidence, I freely forgive him, as I cannot easily forget his readiness to be of service to me when I wanted him at Alicant.

not recollect seeing any warehouse; we went directly into Mr. Moore's house; we went in at the street-door; I do not recollect whether the Reverend Mr. King was there; I went to the sitting-room where Mr. Moore was.' Now these are the circumstances which took place at the time of the assault: 'He was alone reading; Colonel Adam pulled a paper out of his pocket, and asked him if he was the author of it; Mr. Moore said it was his hand-writing.' Therefore of course he made himself privy to the contents of the paper, and is the person who so far was instrumental to its publication. 'But that he did not mean it to Colonel Adam; the paper was not read out; Colonel Adam asked Mr. Moore, why he refused Mr. King a billet upon his house; Mr. Moore said, it was not lawful; that no person was authorized to billet any person on his house; Colonel Adam said, he would give his quarters, those he had at the Adjutant-general's office, to Mr. King, and he himself would remain at Mr. Moore's house. Mr. Moore said he would not suffer Colonel Adam.' So that the objection is not to the person of the chaplain, or to any sort of billet not being properly authenticated, 'but he would not suffer Colonel Adam, or any other person, to remain in his house except by

force.' Therefore he fairly puts himself at issue with Colonel Adam, declaring that any billet to take place shall be done by force; and it would have been fortunate for Colonel Adam, if instead of applying personal force to this gentleman, the force had been employed to carry into effect the billet, about which, under the necessity of the case, there could be no question; and if the Plaintiff had opposed himself bodily to the person to be billeted, that force might have been met by contrary force to overcome the resistance."

I must beg leave to deny the noble Lord's conclusion, that I had declared that any billet to take place should be done by force.

Lord Ellenborough. That is expressly in the evidence.

Mr. Attorney-general. This gentleman has read it from the evidence.

Mr. Moore. With deference, I contend the fair meaning of the evidence to be, that I said the billet of Mr. King was not lawful; that no person was authorized to billet upon my house. If my opinion was correct, I was justified. Your Lordships will recollect that it is in evidence, that the whole of my mercantile house, twice or thrice the size of the one in question, was occupied by the military. Three or four large warehouses of mine were

also occupied for alleged military purposes. I had the Spanish Governor and the English Quarter-master-general's acknowledgment in writing that no one ought to be billeted upon my private house. Had I not, therefore, reason to say, that no person was authorised to billet upon my house? If I considered the billet not lawful in the hands of Mr. King, what reason had I to suppose that Colonel Adam taking it could make it lawful? I was not very likely to rejoice at having the Defendant in my house, who only two days before had threatened me with personal chastisement, without pretending that I had given him even the slightest provocation. I appeal to your Lordships, I appeal to the understandings of all reasonable men, whether the proper construction of the evidence be not, that I considered the billet brought by Mr. King illegal, and that I knew that no legal billet could be procured upon my house.

His Lordship, a little after, says: "about which, under the necessity of the case," I defy any person to shew in the evidence the least proof of any necessity existing at that period: on the contrary, Sergeant Power says the army had been there four or five months, and that only a small part was in Alicant. Was the Rev. Mr. King in want of

a shelter from the pitiless storm? The principal part of my house had been for two days subsequently to his presenting an unlawful billet occupied by four soldiers with fixed bayonets without his appearing in them. It would therefore be absurd to talk of a necessity of beating me in order to get Mr. King or the Defendant quarters; and if it had been necessary even to enforce a billet for him, the Quarter-master-general of the British army would not have shrunk from his duty, without the interference of the Defendant. Does not the noble Lord in these few words give the Defendant all the advantage of a justification which, if as true as I hope I have proved it false, could not have been given in evidence, but must have been pleaded? Then I resume his Lordship's speech again:

"The Plaintiff said: 'If by force of arms you take my entire house, I will leave it; otherwise you will not remain in it, nor any other person.' So that he fairly traverses the right of billeting, and says: 'It shall be resisted; and that it is only superior force that shall carry it into effect.' Now comes the unfortunate part: 'General Adam ordered me to lay on; his exact words were, Lay on, Power; I had a stick in my hand I usually walked with; I had walked with that stick

from the Adjutant-general's office to Mr. Moore's house; I seized Mr. Moore with my left hand by the collar, and beat him about the shoulders with the stick I had in my right hand; I gave him three or four blows to the best of my knowledge, which Mr. Moore endeavoured to keep off with his arm; the General then said, Stop, Power; I did so; Mr. Moore said if there was any law in England he would have it, afterwards when he came to England.'

"These, Gentlemen, are the circumstances of the immediate assault. Had Colonel Adam, when the Plaintiff had said he should have no billet but by force, applied his force only for the purpose of enforcing his billet, he might have kept himself within the limits of the law."

My Lords, by the evidence it appears that Colonel Adam was attended by three armed men, himself armed, and that four soldiers armed were also in the house. My Lords, I was alone and unarmed. Am I not, then, justified in considering it a bitter sarcasm to suppose a necessity of his applying his force against my person, for the purpose of enforcing his billet; for in every other way he had applied it two days before, when he forced open my house, and stationed four soldiers

with fixed bayonets to keep possession of my principal apartments? And is not this again giving the Defendant the advantage of a justification, or at least of a mitigation? Then I resume his Lordship's speech again:

"But, unfortunately, irritated either by some publication which he supposed to be directed againt him, or some contumelious letter, he carried into execution the suspended purpose he had formed, and the commission he had delegated to the Sergeant, and this must be the subject of your compensation in damages."

Lord Ellenborough. I suppose there is more, I do not say much at present; I suppose you will bring it all out bye and bye.

Mr. Attorney-general. He does not say it is all his own evidence, my Lord.

Mr. Moore. My Lords, I have already fully observed on the illegality of allowing the contents of a written paper to be presumed; but should I be refused a new trial, will not the admission of such evidence be the severest blow that can be struck against the happiness and security of the subjects of these kingdoms. The noble Lord then says—

"I do not enlarge upon the circumstances how unfitting it is that indignities should be offered by any one gentleman to another,

most of all by a military man; that has occurred to the feelings of those who have been concerned for General Adam and for himself, by his counsel he professes that you have before you a person perfectly conscious of the impropriety of his own conduct."

And yet that counsel, contrary to what his client knew to be the fact——

Lord Ellenborough. You should always tell us when you introduce your own observations.

Mr. Attorney-general. I beg your Lordship will not stop him if he is disposed to libel me.[14]

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[14] Mr. Attorney must be very conscious of the nature of his own effusions to take the alarm at the least quotation from them; but what must the feelings of that man be who could talk of "libelling," after he had roamed to the right and left for every falsehood and calumny that he could rake out of the political sewers of the Alicant of 1812 to bespatter me. Upon this occasion Mr. Attorney did appear to have admitted the justice of the law of retaliation, for a moment at least, for I certainly heard him add, that I had his leave to libel him, and I was on the point of turning round, and telling him that I had had too much experience of his respect for truth to trust to him, but I thought it better to continue, not minding what he said.

Lord Ellenborough. But he runs on with a flowing context, and puts my sentences into part of his own.

Mr. Attorney-general. No one will suppose that the libel on the Attorney-general is by your Lordship.[15]

Lord Ellenborough. You should, in justice, make some kind of pause.

Mr. Moore. Certainly, my Lord: and yet that counsel, contrary to what his client knew to be the fact, attempted to hold me out as the head of a party in opposition to the English; as inserting mock advertisements in the Diario respecting British deserters, which he must have known to be false, as with folded arms blocking up the entrance of my house to English soldiers shivering in the streets, and in short, as doing every thing that in the eyes of the jury of merchants he was addressing, he knew would be most likely to

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[15] Did his Majesty's most learned and most polite Attorney-general mean to exhale his last breath with a dry truism, or with a piece of elegant wit or sarcastic humour; at any rate, as I heard no more of him I might, by a "touch of imagination," have fancied him sunk "under the bar," if, on casting a glance behind me I had not seen him and his silk gown against the back of the bench.

crush me for ever as a merchant.—Then his Lordship speaks—

"With respect to the circumstances by which you are sought to be induced to enhance the damages, it would be a grievous enhancement—if you went beyond the personal injury to himself; you will take into your consideration all the circumstances which surround a transaction of this kind, but when you are desired to give damages, as if this had broken up his trade, I think that is going beyond the proper line."

Mr. Justice Le Blanc. To be sure it is,[16]

Mr. Moore. "It is said that he could not remain in Alicant to carry on his commercial affairs—why—because he had been beaten Then any man, as soon as he has received an insult, may say—I have been beaten in London, and I will therefore go to Amsterdam, and you are to pay for the transportation of myself and family, and the expenses of my settling there: that is the account given by one of the witnesses."

With the most profound respect I beg

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[16] I beg leave most respectfully to differ with the learned Judge; and, "*mutatis mutandis*," he would, I have little doubt, have been of my opinion.

leave to be permitted to remark, that I cannot discover that any witness gave such an account. Austin Moran, to whom the question was put, denied it, saying, "No, not from London:" and Mr. Strange the only other witness to whom it was put, expressly states—"No, I should think not, because you might obtain justice here."—Then his Lordship proceeds—

"Then another says, Mr. Moore could not have remained and carried on his business as before. I asked him why—because he required the use of his commercial house, and the use of his commercial house was, to a certain degree, obstructed by the occupancy of these military persons. Then there is another gentleman, who is the partner, Mr. Strange, who gives an account, from which it does seem that though Mr. Moore had not determined to quit Alicant he had determined to make a clear ship and to get rid of his partner, for he had told him he would not have him, for he was of too soft and condescending a nature to upset and resist this system of billeting."

I hope I have already shewn to your Lordship's satisfaction, that all that Mr. Strange said as to what happened long previous to the assault was not admissible, and could have

nothing to do with the question. Your Lordships are well aware that of the billeting I did not complain, upon the record; your Lordships know that it is a local action; that I could not complain of it; but if your Lordships have such a power, I pray your Lordships to grant an issue, and I undertake to prove that I was willing to do, and did more than any other individual at Alicant, for the accommodation and comfort of the allied army. Mr. Strange in no part of his evidence states that I had meant to upset and resist the system of billeting.—His Lordship proceeds—

"He found fault with the authorities for taking possession of his property, by putting in soldiers, and not dividing the burthen equally. How does it appear it was not divided equally; but it is not an unequal burthen then that he objects to, but the billeting of soldiers there at all. What, when all the French army were in the neighbourhood were not our soldiers to be put under shelter when they were fighting the cause of Alicant? were they not to have house-room in Alicant? I can only say, in respect of the violence used, Colonel Adam is certainly the delinquent; on other matters, I do not envy the feelings of the man who could quarrel with the sol-

diers being billeted in Alicant, the place they were then defending by their arms, and which they wrested from France by their most extraordinary exertions. Mr. Strange says he thought me of too condescending a nature, so that it seems as if he had meditated the devoting himself, in a considerable degree, to an opposition to this odious and abominable system of billeting. No doubt the having persons introduced into a man's house is a great inconvenience; but it is a still greater inconvenience to have no house into which a man can go, nor no property, nor no defence.

The question for you, Gentlemen, is, what are the damages for this outrageous conduct."

Is it in evidence that I quarrelled with the soldiers being billeted in Alicant, or that I had meditated the devoting myself in a considerable degree to an opposition to billeting, or putting the British soldiers under shelter, and yet coupling this with the supposition that I had left the country through fear of the enemy. Could any man be shown in more unfavourable colours to the jury. I trust, therefore, his Lordship will be the first to accede to my motion for a new trial, if it shall appear upon a cool review of the case to his Lordship himself, that he painted in his powerful language my character in the most

unfavourable colours, and that he gave the benefit of an eloquent eulogium to the Defendant in the following words :—

" It is to be lamented, and must be lamented by this young gentleman, of whom I know nothing, except that in reading the gazettes of one's country one is a little familiar with the name of a man who has served his country, and has no doubt bled to his honour, but that is no justification, one laments that a man who has done well should at any time have done ill."

My Lords, what praise could be more delicate, and at the same time more powerful on the minds of a British jury ; and is not this giving the Defendant the advantage of character, which I hope I have proved not to be admissible. His Lordship then proceeds—

" For that which he has done ill you will punish him in damages, but for that which he has not done, and in the case of persons who may seek to make that a handle to crush him, you will not permit it to be so used, but will hold the balance of justice even, and to that justice I leave him in your hands."

My Lords, I am not conscious of ever having injured any man, and I am certain that it is not my wish to injure any creature capable of feeling ; but I may say with reason

and with truth upon my side, that the Defendant and his friends have done every thing in their power to crush me in return for the greatest kindness and civility. What the Defendant himself could not accomplish by perfidy and cruelty without example, using with that view the power he was invested for other and better purposes his friends have endeavoured to complete in the temple of justice, and if there were no appeal from the decision in Guildhall on the 21st of December, they would have succeeded in crushing me as a merchant, and in as far as it was in their power as a rational being; for it must appear upon the face of the result of that trial, that twelve British merchants declared that I had lost 7,000 a year, independent of other heavy and severe losses by my own folly.

How different must my situation have been, if the jury had been directed to consider that there could not be the slightest ground for justification, or that it would have been put upon the record, as the Plaintiff had put a count in the declaration, which was there for no other purpose than to enable the Defendant to justify his conduct if he could; and if the noble and learned Lord on the bench had addressed the jury in the words of

Lord Mansfield, in Wall and M'Namara, 1 Term Reports, 536:—"In trying the legality of acts done by military officers in the exercise of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright; it is the same when complaints are brought against inferior civil magistrates, such as justices of the peace, for acts done by them in the exercise of their civil duty. Then the principal enquiry to be made by a court of justice is, how the heart stood, and if there appears to be nothing wrong, there great allowance will be made for misapprehension or mistake. But, on the other hand, if the heart is wrong, if cruelty, malice, or oppression appear to have occasioned or aggravated the imprisonment or other injury complained of, they shall not cover themselves with the thin veil of legal forms, nor escape under a justification the most technically regular from that punishment which it is your province and your duty to inflict on so scandalous an abuse of public trust."

My Lords, had this been stated to the Jury, they could not have hesitated to find that the

Defendant was actuated by cruelty, malice, and oppression, without even the thinnest veil of legal forms. It was impossible on this occasion to allow the Defendant the poor apology of having acted through the passions natural to such a youth. From his assembling such a number of witnesses of his own, from his previously preparing the Sergeant, it was impossible it could be the result of any thing but a deliberate design to get possession of Plaintiff's house and property, to insult the Plaintiff, and compel him to leave the town. The learned counsel for the Defendant did not give the letter in evidence: it is therefore clear that in their opinion it afforded no grounds of mitigation. It was not possible to conceive how an assault could be committed with more premeditation, with a more determined purpose of ruining the Plaintiff. The question of special damages was certainly deserving of the most serious attention of the Jury; the amount claimed and proved was very great. It was said that the Defendant was not able to pay large damages: that was a topic which the Jury ought, in my humble opinion, to have been told to dismiss entirely from their consideration. If the Plaintiff was legally entitled to recover special damages, the ability of the Defendant to pay

has no more to do with the question than if the action were brought for goods sold and delivered. The following are circumstances that bear on the question of special damages: the town of Alicant was occupied by an allied army commanded by a British General; the Defendant was Adjutant-general, the second officer in the army in point of authority, and the channel through which all complaints to the General should be made; he goes to the Plaintiff on the 16th of December, and before his workmen insults and threatens him; he forced his way into Plaintiff's house on pretence of enforcing billets; he stations four soldiers in the house, and leaves them there two days, without either Mr. King or himself coming to the house. He was Adjutant-general, and yet, contrary to the established discipline of the army, he interfered as to the billeting, the peculiar province of the Quarter-master-general. It was proved that the civil authorities of the town were the persons who had the power of billeting soldiers; he does not demand their interference, but personally forces Plaintiff's house. His conduct appears to be that of an officer who thought himself above responsibility. On the 18th of December he went to Plaintiff's house, and without any provocation, for it would be absurd to assert that there was

any provocation given to the Defendant in the conversation that took place on the 18th of December, he orders the Sergeant to beat the Plaintiff, and afterwards takes possession of Plaintiff's house. Upon these circumstances taking place, the Plaintiff states that he, fearful of his personal safety, thought it necessary to leave the town of Alicant, and found it impracticable to carry on his business. It was therefore for the consideration of the Jury, whether the Plaintiff, acting as a wise man, with a prudent regard to his own safety, ought to have remained in the town. Without obtaining signal redress he could not have continued there. The publicity given to the outrage by the Defendant (for it would be ridiculous to say that he did not intend to publish the fact, having brought so many witnesses) marked the Plaintiff out as an object of hatred, whom every retainer of the army would have thought himself entitled to illuse, and safe in so doing. It was impossible to get redress by applying to the Spanish authorities. It must be admitted that there is no similitude whatever between London and Alicant at that period. In London the civil authority was predominant; but in Alicant the military.[17] Redress could be immediately

[17] And of what description that military was, will appear to the reader if he will take the trouble to refer

had in London; in Alicant not at all. Should the Jury be of opinion that the Plaintiff was

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to pages 289, 290, and 313, of Sir John Murray's Trial. The following letters may also enable the reader to form a judgment of the manner in which affairs were conducted in Alicant at that period:

(TRANSLATION.)

"I am firmly persuaded that your Excellency will do me the honor to believe that I have given repeated orders to the Junta for billeting to avoid all dissension or dispute in the performance of this charge entrusted to their care. Notwithstanding, I again repeat to the said Junta to use all their exertions and endeavours that the English officers be billeted with that consideration which is due to them, and which I have so much recommended I will also placard a caution to the public, manifesting the complaint of your Excellency, and I will exhort and order that whoever does not receive in his house a billeted English officer with that moderation and circumspection due to him, assisting him in every thing that is necessary and is due from gratitude, shall be punished for disobeying what my orders prescribe; but I also beg your Excellency will caution your officers that if they should have any reason for complaint, they do manifest it without taking the law into their own hands, as I understand some have done, ill-treating their hosts, turning them out of their own houses, and abusing them with indecent expressions and actions.

"In the meanwhile, I have ordered an investigation of what your Excellency wishes to know, and I will pass to your Excellency's hands a circumstantial

compelled by the Defendant's conduct to leave the town, it is peculiarly their province

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account of what has taken place, and for this purpose I expect the particulars through the Quarter-master-general.

" I repeat to your Excellency that it is impossible that on my part the good harmony which characterizes the two allied nations, English and Spanish, should be disturbed, much less upon points which can be discussed and cleared up between two authorities so united as are your Excellency's and mine.

" As to the return of the official letter of which your Excellency speaks, I do not recollect, or I do not comprehend, what your Excellency means to convey to me, and I wish for every explanation possible, in order to satisfy your Excellency, and that you may remain without a shadow of doubt as to my honorable conduct, which agrees exactly with the manners of civilized nations, and more especially with mine, the consequence of that education I have received, which has taught me to act with the politeness and respect which your Excellency always merits. God preserve you, &c. &c.

(Signed) " JOAQUIN CAAMANO."

(TRANSLATION.)

" *Alicant, Oct.* 16, 1812.

" The Quarter-master-general of the allied army has frequently to demand quarters in this city for those officers who in the discharge or execution of their duties come here. For some time past the persons who receive orders to admit lodgers not only refuse to receive them, but insult them in a very

to say whether the Plaintiff could have carried on his business, it being known that he

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decided manner. In consequence, I address myself to your Lordship, in order that you may take into consideration the results of a conduct so opposed to the general interest of Spain in such critical times, and so little merited on the part of the army under my orders; at the same time I shall be obliged to your Lordship to take measures to avoid these difficulties in future, and to send me a circumstantial detail of what has taken place, that I may assure myself that no person under my orders has offered any violence to the citizens of Alicant.

"The Quarter-master-general will send to your Lordship the particulars of the resistance lately experienced, in not receiving an officer billeted in a house of this place.

"I repeat my wishes to contribute on my side to maintain that harmony which ought to characterize two nations engaged in the same glorious cause, to defend their liberty and independence against the common oppressor.

"At the same time I find myself obliged to observe upon the manner with which your Lordship has returned me my official letter, of which this is a translation, without being inclosed, and by a servant, who only brought me a message. Having seen a great part of Europe, and being informed of its customs it appears to me extraordinary that such a way of acting was followed by your Lordship, who I do not doubt knows equally the customs received among the inhabitants of civilized Europe. I do

was publicly chastised by the Adjutant-general's order, and been obliged to leave the town. The Jury are most competent to say, whether any merchant would have consigned property to the Plaintiff, or given him credit, until the circumstances of the case were satisfactorily explained. Should the Jury be of opinion that it was prudent in Plaintiff to leave the town, and that in consequence he lost his business, the Jury are bound to give damages to the extent of the loss sustained, at least to the amount of the damages laid in the declaration. I fear, my Lords, I have tres-

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not chuse to construct ill a circumstance so notable between persons of dignity, but I find myself obliged to ask an explanation.

"God preserve your Lordship many years.

(Signed) "JOHN MACKENSIE,*

"Major-general,

"Commanding the allied army."

"*Don Joaquin Caamano,*

"*Governor of Alicant,*

"*&c. &c. &c.*"

* The whole of this letter, except the signature aud the words "Major-general commanding the allied army" was in Spanish, with which language the General was unacquainted. The first original letter was in English, as usual. The Governor desired his secretary to send it to the English Consul, who translated papers for him. By mistake, or by design, it was taken to the English General, who seems to have considered it as a personal insult. This turned out to be the fact, upon inquiry being made subsequently into the business.

passed too long upon your Lordships; but the cause is to me of the greatest importance, both with regard to my character and fortune.

I trust I have proved to your Lordships, that evidence was admitted at the trial that ought not to have been admitted, and that his Lordship in his charge to the Jury did not direct them to draw the proper conclusions. I therefore trust that your Lordships will grant me a rule.

Mr. Justice Le Blanc. The grounds upon which the application for a new trial is made, are that the Defendant has been permitted to go into a justification where no justification was pleaded, and that matters have been left to the consideration of the Jury which were not supported by the evidence.

With respect to any of the legal points to which authorities have been supplied to this gentleman, there cannot exist a doubt. It was an action for a personal injury and assault; the general issue was pleaded; upon that there can be no doubt that the Defendant was not at liberty to go into that which formed matter of justification, but that he was at liberty to cross-examine the witnesses as to all the circumstances of the case, from which he might attempt to extract that which might operate in mitigation; how far those

It is stated that there were observations made at the time of the trial, by which the contents of that letter as to which Colonel Adam the Defendant inquired were assumed, but nothing more was assumed than this, that that letter must have contained something which produced a degree of irritation in the Defendant's mind; and there is no man alive who can do otherwise than draw that conclusion from the circumstances. Men do not go into other houses, and without any cause whatever commit an assault. When a witness proves there was an assault committed, and it is attempted to be said there was no provocation, the common observation is, that is so unusual and so improbable no man can believe it.[21] There must have been some ground for it, and when a man goes with a paper and asks another whether he is the

menial bravo who beats me by his direction; having first asked me whether the letter was my hand-writing, would a Judge be justified in telling the Jury that this letter was the cause of irritation? ought he not to tell them that they ought to dismiss it from their thoughts, as doubtless it did not serve the Defendant's cause, or else he would have produced it?

[21] I did however make oath thereof in the affidavit before Mr. Justice Bayley, and I trust it will not be libelling the Bench to say that I do not believe that any man upon it has a greater respect for truth than I have.

author of that paper, and he avows it, there can be no doubt it must have comprehended something which the party considered offensive; therefore it does not appear to me that the observations went further than the facts of the case necessarily extracted.

Attending to all the other circumstances and all the observations which are represented to have been made at the time of the trial, it seems to me nothing was advanced further than the facts of the case fairly warranted and called for; and upon the whole it seems to me that the Jury have given not narrow damages at the time when they gave to this party £500. He was not in any degree incapacitated by bodily sufferings from carrying on his trade. He certainly would feel the insult: probably his *mind* would be wounded infinitely more than his *body*; but it appears to me the Jury have given a fair compensation for the damages his feelings have sustained.[22] [23]—*Rule refused.*

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[22] This is in unison with the declaration of the Judge's Clerk in Sergeant's Inn on the 24th of November.

[23] The learned Judge's comparative estimate of mind and body would be a curious problem to solve by algebra upon these known quantities. In Merest, Esq. *v.* Harvey, 5 Taunton, 442, 500l. damages were

given "for a trespass in sporting, persevered in in defiance of notice, and accompanied with indecent and offensive demeanour." A new trial was refused, and Mr. Justice Heath in refusing said, "I remember a case where a Jury gave 500l. damages for merely knocking a man's hat off, and the Court refused a new trial."

It would be the height of duplicity and meanness in me to state, that any thing that occurred on the motion for a new trial has convinced me that I had a fair trial—that his Lordship did not direct the Jury to presume the contents of a written document—and that evidence in no manner connected with the assault was admitted. Had my Counsel enabled me, according to my wishes, to appeal to the highest legal tribunal in this country, I should certainly have done so; but that not being in my power, I appeal with confidence to all liberal and enlightened minds.

IN THE APPENDIX,

A refers to Mr. Serjeant Best, page 99.
B refers to Mr. Sergeant Power, page 121.
C refers to Mr. James Budd, page 153.
D refers to Mr. Austin Moran, page 197.
E refers to Mr. Patrick Strange, page 205.

Errata.—Page 197, *for* Morgan, *read* Moran.

APPENDIX.

A

AT the first consultation, Mr. Sergeant Best began by lamenting, that such an action should be brought against Colonel Adam, with whose family "We are all acquainted; —but," continued he, addressing himself to Mr. Brougham—"we must do our duty:" upon which Mr. Brougham also expressed the pain with which he at first heard of it, adding that he was related to the Defendant. The learned Sergeant then took up the matter warmly, and talked of a parliamentary inquiry, and of an impeachment of the General; adding, that Lord Wellington would have put the adjutant-general of his army under arrest for such conduct. Subsequently, the consultation passed over in stating difficulties as to the count in the declaration, charging special damages; though the learned Sergeant said he knew nothing of special pleading, and although the consultation was for the purpose of inquiring what evidence would be deemed requisite to support the action.

On the subsequent day, I went to Guildhall with Mr. Evans, who had drawn the declaration, to propose to the learned Sergeant to have it laid before Mr. Holroyd, which Mr. Evans was particularly anxious should be done, for my satisfaction.—I sent a note into court, requesting the learned Sergeant to come out for a moment; the learned Sergeant came, and said he had wished much to see me, and, if I came to his house in the evening, he had a proposition to make to me. I immediately stopped him, saying, that that was quite out of the question—for that Colonel Adam could not now make me any competent reparation; and I added, that I should prefer, even in a pecuniary point of view, a verdict for the damages laid, though I did not recover a farthing of them, to 30,000*l.* paid without that verdict. He said, that being the case there is nothing more to be said about it. The learned Sergeant approved of having the declaration laid before Mr. Holroyd, which was done; and in consequence of his advice, an alteration was made in the declaration.

In pursuance to the advice of different friends, to whom I mentioned what had occurred, I desired my solicitors to retain Mr. Topping, in addition to Mr. Holroyd; and doubts having been started at the former consultations, whether the Judge might not refuse to admit evidence as to the special damage, I told my solicitors that my principal object being to shew that I had acted prudently and wisely in leaving the town, it was essential that such evidence should be given; they in consequence added the following note to the Brief—"Should the Judge, on the trial of the cause, refuse to allow Plaintiff's counsel to go into the evidence of the consequential damages, it is the most earnest wish of the Plaintiff and his friends, that a Bill of Exceptions should be tendered."

At a general consultation at the learned Sergeant's house, he began, by declaring, in the most decided manner, his opinion, that the special damages could not be supported; but, on Mr. Topping's saying that he considered it like any other case of special damages, which would depend upon the nature of the evidence, the learned Sergeant seemed to agree, and I said that I would not have brought the action merely for damages. The learned Sergeant then objected to offering a Bill of Exceptions, saying, that the evidence stated was not sufficient: but on Mr. Topping's suggesting, that it was impossible to say what the evidence would be till it was given, the learned Sergeant appeared to assent,—and positively declared, that he would state fully all the particulars in his Brief. After some discussion as to the necessity of leaving Alicant, he declared that he himself would have left it; and agreed that I could not of course remain in my house after what had occurred.

In consequence of an attack of the gout in both feet, I could not well attend at the consultation two days before the trial, but I sent what I wished to observe upon the case, in writing, to be read to my counsel by my solicitors, and subsequently to be delivered to the learned Sergeant.—I understand that

the learned Sergeant, at this consultation, stated, that he had heard that I had published an advertisement, accusing Colonel Adam of having stolen a velvet coat of my father's:—this story must relate to General Roche, and is fully explained in my statement.

On the day before the trial, I sent to my solicitors, to inquire if any further explanation or particulars were required by the learned Sergeant. Mr. Lowten called upon him about five, upon his return from Guildhall, when the learned Sergeant told him that he had nothing to do that evening, and that he would dedicate the whole of it to making himself master of the case; and that, if he required an explanation of any part, he would send him word. Between eight and nine I called again, to know if any thing had been heard from the learned Sergeant. I proposed to Mr Lowten that we should call upon him, to see if any thing could be explain d; but Mr. Lowten gave it as his opinion, that the learned Sergeant had the whole case so fully before him, and we had so many discussions upon it, that we should probably only interrupt him in his preparatory arrangements, and do more harm than good; as, if any explanation had been necessary, he would certainly have sent a message to him; and to this opinion I conformed.

B

Before I enter into an explanation of the difficulties I encountered in procuring evidence of the assault, I feel it my duty to express my admiration of the impartiality and high sense of honor with which the Adjutant-general to the forces, acting up to the duties of his station, attended to my application for his assistance in bringing forward the witnesses necessary to further the ends of justice, at the same time that I must lament that owing to a total absence of these feelings in others, his intentions have not been attended with success.

In the beginning of February, 1815, the Adjutant-general gave orders that Captain Owen of the 73rd, and Sergeant Wm. Power of the 58th regiment of foot, should be sent home from Canada; and he assured Mr. Ryan, who taking a friendly interest in my success was so good as to call upon him that he had no doubt they would arrive in England before the end of June. I, therefore, relying that the trial would positively come on in the sittings after Trinity Term, wrote to Mr. Strange to Alicant to be in London by the end of June at latest, with Mr James Budd and Mr. Austin Moran. He also brought Carlos Botareli and Manuel Martinez, whom he found upon inquiry were in my house at the time of the assault, and had seen all that had passed on the 16th and 18th of December, except the assault itself; they, however, heard the blows.

Whilst I was anxiously expecting the two witnesses from Canada, Sir Wm. Clinton told Mr. Ryan that Captain Owen was or had been in town. Upon inquiry at the Adjutant general's office it appeared that Captain Owen had been there previous to setting out for the continent; but as he had not reported himself as arriving in England in consequence of any order, no notice had been taken of it. We traced him to lodgings in Suffolk-street, from whence it appeared he had set out on the very morning we made the inquiry for Ramsgate. Mr. Ryan having kindly offered to endeavour to overtake him and bring him back if it could be done in time for the trial at those sittings, followed him to Brussels, from whence he had also set out for Paris. In consequence of this disappointment, and Sergeant Power not appearing, the trial, which had been appointed in the expectation that Captain Owen would be back in time, was put off.

About two to three weeks after, Captain Owen made his appearance at my solicitor's; to whom he said he had been directed at Mr. Adam's chambers. The following letter will explain how he acted:

"*Temple, Aug.* 8, 1815.

"Dear Sir,

"I send you a statement of what took place at Mr. Evans's chambers when Captain Owen was taken there by Mr. Staples, as far as I can collect, though he says he cannot vouch for its correctness, as he had no idea he should be called upon to state it particularly.

"Mr. Staples states, that he took Captain Owen to Mr Evans's chambers; that being seated Mr. Evans said to Captain Owen, he supposed as a gentleman he would wish to do what was correct and proper; and was about to put some questions to him, when the Captain said he did not know whether it would be proper for him to answer his questions, and assigned two reasons for his objecting to do so:

"1st, That upon courts martial it was never the practice for a person intended to be called as a witness upon the trial to inform any one of the nature of his evidence; and if such person was known to do so he would not be examined.

"2nd, That upon his arriving at Paris, and being informed he must immediately repair to London, he had a conversation with a gentleman who Mr. Staples thinks he said was one of Lord Wellington's staff, who told him he was not obliged to give evidence until he was satisfied his expenses would be paid.

"Mr. Evans reasoned at some length with the Captain upon both these points, and endeavoured to convince him of the fallacy of his opinions; and on the first point observed how utterly impossible it would be for parties to go into a court for justice, if they were not acquainted with the nature of

the evidence their witnesses would give; that such conduct was always strongly animadverted upon at the trial by the judge; and that he had frequently known Lord Ellenborough to do upon trials where the witnesses had so conducted themselves; and also shewed that courts martial differed materially from the present case, inasmuch as those were criminal proceedings, whereas this was merely a civil suit between the parties.

"With respect to the question of expenses, Mr. Evans informed the Captain that the proper time for him to object to giving his evidence on this ground would be when he came to the witness box to be sworn; when he might then refuse to give his evidence until he was satisfied his expenses would be paid. But that any thing he might say in his (Mr. Evan's) chambers would not at all prejudice or affect his right to do so at the trial. The Captain, however, did not appear the least apprehensive his expenses would not be paid, nor did he seem at all to press this matter; but from what Mr. Staples could judge, withheld his testimony from a conscientious conviction in his own mind that he should not be doing that which a gentleman and man of honor ought to do, if he was to disclose the nature of his evidence before he came into court, as he had previously said he had never been examined in any court of justice except on military courts martial, and that he could wish to state the truth. Mr. Evans then said that as he was impressed with these ideas he would not urge him to answer his questions; but recommended him to inform himself upon the subject, and that if he would do so, he, Mr. Evans, had no doubt but that he would find the information he had given him to be correct. The Captain said he would advise with some friend. Mr. Evans then observed that as the Attorney and Solicitor-general were counsel on the part of General Adam, he would advise him to consult either of those gentlemen, who would both inform him that what he (Mr. Evans) had stated was correct, or something to that effect.

"Upon Captain Owen's leaving Mr. Evans's room, Mr. Staples offered to accompany him to the Solicitor general's chambers; but the Captain said he could not go to the Solicitor's then, as he had an appointment elsewhere; upon this Mr. Staples gave Captain Owen the address of the Attorney and Solicitor-general, in order that he might wait on them at his convenience; and further stated that if he would call upon him at any future time, he would accompany the Captain to the chambers of either of the gentlemen above alluded to, in order that he might have no difficulty in finding them.

"The following morning Captain Owen called at Brundrett and Co.'s chambers, and Mr. Staples went with him to the Solicitor-general's in Sergeant's Inn, where he believes the Captain had an interview with the Solicitor-general; but Mr. S. was not present, he having waited in a lower room until the Captain came down. Upon leaving the Solicitor-general's, Mr. Staples went with the Captain to Mr. Evans's chambers, and on their way thither Mr. S. said to the Captain: "I suppose the Solicitor has told you that it would be correct in you to disclose the nature of your evidence:" when he replied, he should act as he had been advised. Upon the second interview with Mr. Evans, the Captain stated that he had been with the Solicitor-general, and that he must beg to be excused from saying anything upon the business in question.

"During the first interview at Mr. Evans's, Mr Ryan came there; when a conversation took place between Mr. Ryan, Captain Owen, and Mr. Evans, upon other matters, but the particulars of which, as he (Mr. Staples) did not go to Mr. Evans's under an impression that he was to attend with a view of being called upon hereafter to state in writing what took place, he cannot pretend to set forth.

"I trust the above statement will be satisfactory to you; but if it should not, I would refer you to Mr. Evans and Mr. Ryan on the subject, who will be able to state probably with more precision than Mr. Staples what did actually transpire on the interviews with Captain Owen.

"I believe I sent you all the papers you gave me respecting the demand against Mr. Daniel, and am not aware that I have any other, but shall be glad to see you on the subject of them.

"I am, dear Sir,
"Yours truly,
"THOS. LOWTEN."

I saw Captain Owen in the court-yard of the Horse Guards, and was surprized to find I had never seen him before; and having learned that he had applied for permission to return to France till the trial in December, I addressed the following letter to the Adjutant-general:

"Sir,

"Understanding from Mr. Ryan that Captain Owen, of the 73rd regiment of foot, has returned to join his regiment, leaving it to be understood that he is a necessary witness in my suit against Major-general Adam, I beg permission to state that I applied for his return to this country under the impression that he was the officer present in the manner mentioned in the annexed statement, of which a copy was forwarded to Paris when it was known that Captain Owen had proceeded thither for his inspection; but I do not know that it was communicated to him there. On his arrival, however, in this country, it was handed to him on his first visit at Mr. Evans's chambers, and he perused it and returned it without giving the

smallest intimation that there was any mistake as to his being present; and on his second visit, after having been, as he said, with the Solicitor-general, he left Mr. Evans impressed with the belief that he was the person so described to have been present, by proposing that my solicitors should forthwith write him a letter, stating that he would not be wanted before December, as the trial could not come on till then, which he might present to the Adjutant-general, and obtain leave to return to Paris, when he would pledge his word of honor to be back by that time, obtaining himself the necessary licence. Having called in the course of the same day at Mr. Evans's chambers, I requested that no immediate steps should be taken to send him such letter, as I wished first to consult what was best to be done to secure his attendance; but Captain Owen went in the interim to my solicitors, and having met one of the partners, Mr. Spinks, he procured from him, verbally, without consulting me, what it appears he considered sufficient authority to enable him to address the Adjutant-general for leave to return to Paris, and if I had not been in the court-yard of the Horse Guards when he came there to receive it, and when to my astonishment I found I had never seen him to my knowledge before, nor he probably me, as I suppose he meant to declare at the trial, I would have had no doubt of his being present at the assault instead of Captain Hatzenbulher, whom I personally knew, but with whose name I was unacquainted, and was in consequence thereof misled to believe it was Owen. Under these circumstances it is evident that Captain Owen is not a necessary witness, and therefore I beg leave most respectfully to apologise for the trouble I have unintentionally given about him.

"I have the honor to be, with due consideration,

"Sir,

"Your most obedient humble servant,

"THOMAS MOORE."

In the mean time the transports from Canada had arrived, and among them the 58th regiment. Mr. Ryan was so obliging as to go to Portsmouth with an order from the Adjutant-general to have Sergeant Power transferred to the 2d battalion, and read to him the same statement as had been handed to Captain Owen, to the correctness of which he agreed in every particular, except to the expression with which Colonel Adam had ordered him to desist from striking, which he said he recollected very well was "Power, have done." And he also said that Captain Owen was not present, but that it was an officer belonging to the office, and one of the three following: M'Donough, Molloy, or Hatzenbulher. I knew it was neither of the two first, and as I thought he could not mistake who the person was, I concluded it was Captain Hatzenbulher, and the more so as upon Mr. Ryan calling at Mr. Disney's, in Parliament street, the agent to his regiment, and meeting there Sir Hudson Lowe, the latter's description of Captain Hatzenbulher corresponded with mine. Sir Hudson said he was intimately acquainted with Captain Hatzenbulher, and that he believed him to be with his friends at Manheim; that he was in daily expectation of hearing from him; and that if he did he would leave his address at Mr. Disney's. I called several times at this gentleman's office, but was informed Sir Hudson had left no message. Having ascertained that Captain Hatzenbulher was Town-major at Corfu; and the Adjutant-general having delivered to Mr. Ryan triplicate orders for his coming to England, Messrs. Baring, Brothers, and Co. did me the favor to transmit them. One was sent to their correspondents at Manheim, who answered no person or family of that name was known there, and that consequently they had sent the order to Trieste. About eight or ten days before the trial, Captain Hatzenbulher arrived in England. Upon Mr. Ryan calling upon him, he said that he had not been present at the assault, which he had signified to Major-general Campbell, at Corfu, offering to make oath thereof; but that Major-general Campbell told him, that although he knew that very well, (for he commanded at Alicant at the time of the assault,) he must send him home according to orders. Mr. Ryan made an appointment for my calling upon him the next morning at twelve; but I declined going, and Mr. Ryan called upon him with Mr. James Budd. Whilst they were there Captain Campbell, Aid-de-camp to General Adam, sent up his name. On its being announced, Mr. Ryan requested Captain Hatzenbulher to decline receiving him until the conversation was at an end, as Mr. Ryan knew Captain Campbell to be an intimate friend of General Adam's. Upon which Captain Hatzenbulher left the room, went down to Captain Campbell, with whom he remained ten or fifteen minutes, and returned with two written slips of paper in his hand. At this interview, Captain Hatzenbulher stated several things which made me think that he would be a material witness in support of the consequential damages; in which opinion my legal adviser coincided. The following morning Mr. Ryan called upon him by agreement to accompany him to my solicitors; but upon going to Mr. Evans's chambers, where both Mr. Lewten and Mr. Spinks were, he absolutely refused to confirm what he had stated the day before, alleging that what he had then said was in confidence, and that he had so remarked at the time to Mr. Ryan. To which Mr. Ryan replied, that it must be perfectly in the recollection of Captain Hatzenbulher that on his mentioning that his communication should be received confidentially, he had answered that

he must of course make it known to Mr. Moore, and that if he or his legal advisers thought it of importance they would necessarily call upon him to confirm it at the trial, to which Captain H. had bowed assent. On his declaring that he would not repeat the opinions he had then given, if called upon to do so, some observations were made as to the advice which he might have received since his arrival in London; at which he appeared highly exasperated, and asserted on his honor that he had seen but two general officers since his arrival, one of whom was Sir Hudson Lowe. In consequence of what passed, my solicitors thought it useless to subpœna him, but he has since sent them a demand for 415l.

Lieutenant Roquefeuille, who was another of the persons present at the assault, had left the English service on the first abdication of Napoleon, but had found his way back to it on his return. I received a letter from a friend of mine, Mr. E. Darell, telling me that he had seen him at Marseilles, and that he considered him well disposed to meet my proposal of attending my cause, as he seemed strongly impressed with the misconduct of Colonel Adam, and the wrong done me by him, and that he had no doubt but his evidence would be of the greatest advantage to me. The Adjutant-general gave orders addressed to the commanding officer at Marseilles to send him immediately to England, where he was to report himself at the Horse Guards for further orders. General Philips returned for answer that he was on leave of absence at Paris, to which place he forwarded the order. Although I was informed by a relative of Lieutenant Roquefeuille's that he was positively in Paris, he did not make his appearance here, as I had every reason to expect he would. I wrote fully on the subject to Mr. Dardis, at Paris, and sent him the necessary statements of what had occurred. The reason for my applying in preference to this gentleman was that he was the intimate friend of Lord Wellington, and that I had grounds for supposing he would exert himself to procure Lieutenant Roquefeuille's attendance in due time. But not receiving any answer to my letters, I requested another gentleman to call upon him and demand the papers I had sent him if he did not chuse to comply with my wishes. Mr. Dardis at first said he had not received my letters; but at the second interview he said he had got them at the dead letter office, and expressed such eagerness and anxiety to serve me that the gentleman thought the business could not be left in better hands, particularly as he promised to write to me immediately. But I never heard from him. When I found that he not only did nothing, but prevented the other gentleman's taking any steps in time, I wrote the week before the trial to a relation of mine at Paris who called upon the mother of Lieutenant Roquefeuille. She stated her son to be absent travelling, possibly about Genoa or Marseilles, and that it would take twelve days to have the letter delivered to him, by which I suppose she meant the order transmitted from Marseilles, and probably addressed to him at her house. She further added, that it was by no means her son's intention to quit the English service.

I was at Winchester during the court-martial on Sir John Murray, and requested Sir Thomas Dyer to do me the favor of calling on Sir Wm. Clinton, and inquiring why he did not answer my letters at Alicant, or make any further inquiries as to what was going forward at my house, after seeing me collared by two soldiers in the street. Sir Thomas returned for answer that Sir Wm. Clinton said he knew nothing of the matter, and that he did not recollect receiving any letter from me, except one about bills, to which he had replied. In consequence of this I called upon Sir Wm. Clinton, to endeavour to bring to his recollection the scene of the soldiers; but I found he was not the general I had seen; and upon stating the date to be the 18th of December, he said: "Thank God, he did not command at that time." He would not, however, look at the copies of the letters I brought, in order that he might tell me whether he had received them, and absolutely refused to answer any questions upon the subject, as he repeatedly did since to Mr. Ryan and my solicitors. I gave my solicitors, a few days before the trial, a list of queries which I wished to have put to him, and I thought it but gentlemanly to let him know them. He told them he could answer them when called upon at the trial, but would not before.

Upon Admiral Hallowell's arrival in town, previous to the court-martial at Winchester, Mr. Ryan at my request called upon him, and stated that I would certainly subpœna him, and therefore it might be agreeable to him to know upon what points I should expect his evidence. The one was with respect to the assault itself, which he must have known from Colonel Adam, from his intimacy with him; I was informed that he had frequently dined, and sometimes slept at my house, whilst Colonel Adam kept forcible possession of it. And the second was with respect to the letter I had written to him on board the Malta, which he must have communicated to Colonel Adam. Admiral Hallowell stated, that with respect to the first point he could say nothing till upon the table, when he would of course tell the truth, as he must consider any thing that passed between him and Colonel Adam in the light of confidential intercourse. And with respect to the second point, that if Mr. Ryan would bring him a copy of the letter I mentioned, he would say whether he recollected having received it, but that he should think himself bound to communicate the particulars of it to Colonel Adam's friends. Mr.

Ryan left a copy of the letter with him, upon a subsequent day, when the Admiral acknowledged having received it, and added that he undoubtedly would have communicated it to Colonel Adam, if he had been on board at the time of receiving it, but that upon consulting an extract from his log-book he found that Colonel Adam only came on board the Malta on the 26th of April, (my letter was dated the 20th,) and that therefore, in that case, it was probable that in the hurry of business he had not. As I could prove that Colonel Adam went on board the Malta on the 19th or 20th, before I wrote my letter, I addressed myself personally at Winchester to Admiral Hallowell, to whom I was introduced by Sir Thomas Baring and Lord Northesk; but he assumed a very repulsive tone, and immediately stated he could say nothing, as he had not even heard of the assault from Colonel Adam, but from public rumour. He was subpœnaed at Winchester, and subsequently, in July, at Plymouth.

But as he was in December on the Cork station, from whence I could not expect to bring him, I desired my solicitor to have the purser of the Malta, who was at Plymouth, subpœnaed, from whom they received a letter refusing attendance for want of sufficient notice, and commenting upon that notice in such a style that he seems to have overlooked that the summons to him was from his sovereign and not from me. He further stated, that "it so happened that he knew of the aggressions of which the plaintiff complained merely by hearsay and conversation, and from no one that he could recollect who was present; whereas the incitement and provocation to the personal assault, a letter written to the Defendant by the Plaintiff, he saw, the same being shewn to him by the Colonel, and which he conceived to be a composition the most maliciously and ingeniously insulting that he had ever perused, insomuch that he had since regretted he did not take a copy of it." The learned purser may now very easily be gratified with a copy of that letter which he regrets not having obtained from the Colonel.

C

This witness was only lately come from school when I sent him to Alicant in the summer of 1811, to learn business under Mr. Strange. He arrived in July, when, not only on account of the season of the year there was little or nothing doing, but when Mr. Strange was totally taken up with his military avocations as a captain of volunteers raised for the defence of the town. When, however, upon the approach of the enemy, in January, 1812, Mr. Strange determined on going to Majorca, he also determined on sending Mr. Budd to me to acquaint me with the situation of affairs. Mr. Budd, upon his arrival at Gibraltar, reflected that a letter would do this as well, and determined to wait my orders there, which were to join Mr. Strange at Majorca, which he did in June, and was dispatched by Mr. Strange as his precursor to Alicant in August. On his arrival he found my mercantile house almost wholly occupied by military people. As Mr. Strange had neither instructed him how to be "condescending," nor supplied him with the means of being so, after some fruitless attempts at being heard at the town-house, he was obliged to take up his quarters with the servants at the top of the house till Mr. Strange's arrival; and as he scarcely ever left the house, either then or whilst I was at Alicant, was subsequently with me at Orito, and accompanied me to Cadiz, he had not much opportunity at that period of learning to judge or form opinions upon any subject connected with my case, or even of knowing what was going forward; for his having heard any thing respecting persons being billeted or not on Mr. Ryan's house only proves what was natural that clerks in the counting-house should remark upon the manner in which I was treated, comparatively with one whom they had very shortly before seen in nearly the same situation with themselves.

D

This witness was a tenant's son, attending upon my father, at Moore Hall, in the county of Mayo, when I passed the year of 1797 there. After my father's death I requested a Mr. Bourke who was coming to my counting-house to bring him out with him, and he attended upon me at Alicant till my departure in 1807, when I requested Mr. Strange to employ him in the counting-house, as I found he had been at school since I left Ireland, and had learned to read and write. By his industry and attention he made himself very useful, and Mr. Strange took him with him to Majorca, from whence he returned with him about three weeks before my arrival at Alicant. All Mr. Strange's "condescending disposition" was of course put into play immediately to free my mercantile house from the obnoxious intruders who had possession of it, as it must be evident to any one who knows how business is conducted abroad, that a merchant without a house could not expect to attract many consignments. It was therefore natural for this witness to suppose that it was very important to clear that house, which was a world to him, as he never left it except by orders; but he certainly could not be supposed much more competent to give opinions respecting London and Amsterdam, than respecting Laputa or Brobdignag. But, with deference to superior intellects, I think that even his opinion, as far as it went, proved the special damage. It was true, that my mercantile house was wholly occupied, as he stated; and in this situation I could not carry on my business in the manner of any other merchant at that time in Alicant, if I had not had another though a

smaller house, but this was sufficient for all the purposes of hospitality and respectability, and I was in consequence satisfied that the other should be occupied, with the exception of the counting-house. It therefore follows that Colonel Adam, by driving me out of the smaller house, which Mr. Sergeant Best unequivocally declared himself satisfied that he had done,—acted, to all intents and purposes, in the same manner as if he had driven me out of my mercantile house, I having only that one.

E

In the spring of 1812, I was informed by Mr. Strange, whom I expected, under every circumstance of the war to remain at Alicant, that he had resolved to retire to Majorca; and shortly after, my mother was informed, that General Roche had not only got possession of her house, but was making himself master of her property in it, by taking advantage of the fears of her housekeeper to purchase it from her. She was in consequence much incensed at my partner not having protected her house and property more effectually, as she said, he ought to have lodged General Roche or whoever might be quartered upon her house, at the mercantile house in the Baranquet, which was much larger. In consequence of these events, and of the expiration of my former partnership, on the 30th June, 1812, I resolved to go out to Alicant to secure my mother's property, and form a new partnership in a way that would insure the proper management of my mercantile establishment in my absence. When I arrived at Alicant on the 7th of October, Mr. Strange had returned thither about three weeks before me, I found the whole of the principal floor of my mercantile house occupied by a military lady and a Portuguese commandant of artillery with their soldiers and attendants, and three Spanish officers, in possession of three bedrooms on the second floor. Mr. Strange had, by means of his "condescending disposition," obtained an order for the removal of four of these five, and as might be expected from his gallantry, the military lady appeared destined to remain. Mr. Strange had not however thought of extending his solicitude to my mother's house, and as it was my chief object to have that cleared, I immediately decided to give up the mercantile house for lodgers, it being reasonable to contribute to the comforts of the army assembled there: I therefore assured the Portuguese commandant and the Spanish officers, that they should not be incommoded. I got Mr. Strange and Mr. Budd to give up their rooms on the lower floor, which with two other smaller ones adjoining, were given up to Mr. O'Shea; this I did to oblige the governor, who was desirous to get me my house, as he was in duty bound to do, but was fearful at the same time of offending the English General, if a proper deposit was not procured for the important papers and large sums of money, which General Roche declared to be in my house; at this time and to the 19th of November, when General Roche's secretary, Iturburn, gave up the keys of these rooms, it is evident, that nearly the whole of my mercantile house, with the exception of the counting house, was occupied by the military. Mr. Strange chiefly slept in the country or at a friend's, and I gave Mr. Budd a bed at my house.

His Majesty's Attorney-general having talked so much of the Spanish authorities, I think it necessary to give an account of the state in which they were at Alicant.

The constitution had been published and sworn to, but the provincial authorities it appointed, had not yet been constituted under the pretext that part of the kingdom of Valencia was occupied by the enemy, though that difficulty had been obviated by a decree of the Cortes. The principal authority in each province, was to be vested in seven individuals chosen by popular election, with the *civil* chief and the intendant thereof. At this period, it consisted of what was called a *Commission de Govierno*, the individuals of which, had been appointed by the Regency at Cadiz. It was composed of the *military* chief of the province General Copons, and intendant Canga Argnelles, of two judges Cozar and Alpuente, of the former Andieneia of Valencia, two Spanish gentlemen Roca and Burunda, Mr. Tupper, and a Franciscan* friar called Padre Rico. The

* Mr. Tupper seems to have been very partial to friars, for he wasted as much of the public money of England upon another friar belonging to the convent of Orito, as properly applied in a printing-office, would have placed "the new lights" beyond the reach of Ferdinand's extinguishers. This friar was constantly writing rhodomontade accounts of his feats against a Baron Massucheli and other French generals, with the grenadiers of Tupper on this side, and the fusileers of Ferdinand on the other. These stories Mr. Tupper crammed into the gazettes, through the "imprenta de govierno," or government press, where there was a French soldier, in an English uniform, as a compositor under his special protection. But "El fraile," the nickname of this chieftian in English pay, chiefly served as a cover for bands of robbers to perpetrate every species of atrocity through the country, whilst he himself, boasted of executing summary and bloody vengeance on the individuals who were supposed not to treat these grenadiers of Ferdinand with sufficient respect; and all this no doubt, considering his clerical character, in the name of a God, whom possibly, with admirable consistency, he swallowed every morning.

last had been imprisoned as a turbulent demagogue, but was subsequently released and placed in this new situation by the influence at Cadiz of Mr. Tupper, whose confidential friend and adviser he became.

Some idea may be formed of his consequence, by the following note he addressed to the governor,

(TRANSLATION.)

"In order to execute a most important commission, relating to the combined army stationed in this town, it is indispensably necessary, that your Lordship should give orders, that, at nine o'clock to night, twelve horses shall be at my disposal, for the conveyance of dispatches: and, for the information of your Lordship, I have to state, "that the place where the above-mentioned horses are to call, is at No. 12, Calle Mayor; and of the receipt of this official letter, and of its contents, being in course of execution, your Lordship will please to give the corresponding advice. God preserve your Lordship many years.—Alicant, 22nd September, at 6 o'clock, P. M. 1812."—"Signed, JUAN RICO."

To the Governor of this Town.

Upon receipt of this note, the governor addressed himself to General M'Kenzie, and received the following answer—

"Sir,

"In answer to the paper now before me, respecting the Padre, Juan Rico, who demands horses, as being employed in the British army here, I have only to say, that he is perfectly unknown to me, nor is he employed in any manner whatever, of course can have no claim on the Spanish government, as holding any situation in the service of Britain. I have the honor to be, Sir,

"Your most obedient humble servt.

"And faithfully,

(Signed) "JOHN MACKENZIE."

His Excellency the Governor of Alicant, &c. &c. &c.

The members of this commission, who preferred the exercise of the supreme authority to the establishment of the constitution, were, on my arrival at Alicant, engaged in a struggle to displace the governor who did not enter into their views. A dissension had been caused between him and General Copons on the subject of their respective authority, and steps were taken to deprive him of any resources for the troops which formed the garrison of Alicant, in order to force him to supply its necessities by some arbitrary measures against the inhabitants, which might be represented as despotic and *unconstitutional*: even General Maitland had been made accessary to this plan, as will appear by the following letter from him to the governor, and his answer.

"Alicant, 18 September, 1812.

"Sir,

"Understanding that your Excellency has ordered to be taken by force, a quantity of corn which the Commission de Govierno had collected from the country for the use of the *divisions of Whittingham and Roche;* which corn, your Excellency has appropriated for the use of the garrison of Alicant; I find it necessary to address your Excellency upon this subject.

"*It has been clearly agreed between our two governments, that the two corps of Major-generals Whittingham and Roche, are to be subsisted by the country, in the same manner that all the Spanish troops are.*

"The provisions, therefore, collected for those two corps from the towns of this province, *by the Commission de Govierno*, should not be taken for other uses; but should remain appropriated for the service intended.

"The garrison of Alicant ought, and must be maintained from the resources of the customs, and from the city. There is no town or village in the province, that has not contributed infinitely more to the maintenance of the Spanish troops than the city of Alicant! But why should not this city maintain *its own garrison? there is a necessity for it;* and your Excellency must require that it should; or else, your garrison will be without provisions.

"In the conversation at General Copons, two days since, when I stated, that in the event of this place being attacked, that the two corps of Whittingham and Roche should receive assistance from the English commissary, and that your Excellency should make every exertion to provide for the garrison of the place; I did not intend to cause that the provisions which were collected, or should be collected for the express purpose of supporting the troops of Whittingham and Roche should be taken away, and transferred to other troops. It was under the circumstances, that if a sufficient quantity could not be procured for those divisions, that the English stores were to assist. This never was meant to have those provisions taken away which were collected for them; neither was it meant to remove that duty which is incumbent on the city of Alicant to bear, of contributing to, and supporting its own garrison.

"Your Excellency will therefore, I hope, immediately take whatever measures are necessary to provide provisions for the garrison, by those means which the urgency of the times calls for: in short, you must provide for your own garrison from the city.

"And I inform your Excellency, that the provisions which the Commission de Govierno collect for the Spanish troops of Whittingham and Roche, cannot be taken from them; although, (as I stated) in the event

of the city being invested, it is my intention, that the English commissary should assist those troops as far as he is able, and their unavoidable wants require.

"I have the honor to be,

"With the highest consideration,

"Your Excellency's most obedient

" humble servant,

(Signed) "F. MAITLAND, Lieut. Gen."

"*To His Excellency General Caamano, Governor, &c. &c. &c.*"

(Translation of General Caamano's answer.)

"I regret very much, that your Excellency should have been made a party in matters wholly unconnected with the nature of your command, but the spirit of discord has taken up its abode in this narrow district, and its followers will leave nothing untried to disunite us; I can assure your Excellency, that they will not succeed on my side, neither can I believe that your Excellency will give ear to shameful gossipings, the offspring of an underhand intrigue, which I trust that the Spanish government will dissolve, or that it will exonerate me from the obligation and the oath I have taken to preserve this town, and defend it till I perish amidst its ruins.

"I should not wish to enter into a correspondence with your Excellency on a subject appertaining to the civil government, which might lead to touch on disagreeable topics; because one would be followed by another, and the result would be to occupy your Excellency's time without any benefit, it being incompetent to your Excellency to apply any remedy; and to thwart my measures, so as to prevent my obtaining the ends to which I aim, in consequence of my duty to further the service by every means in my power. When occurrences of this or a similar nature arise, your Excellency and I will decide on them verbally, both being equally actuated by the same desire, and I by an imperious duty; for otherwise, if the spirit of discord which instigates your Excellency to take this first step, can see us once disunited, it gains the object of its perverse endeavours, and reaps the reward it proposed to itself. To write much, and to obtain little or nothing, on the subject of provision, is very contrary, General, to our military profession: to do much and to write little, is the true end I have proposed to myself, turning a deaf ear to those quill combatants of the civil departments whose richest harvest is derived from the confusion they create. The representatives of this branch of the service have formed a plan, to force me to connive at their manœuvres by starving my garrison, but they are far from gaining their ends; there is, and there has been, a most wasteful expenditure of the resources of the state, in money and in produce; if it had been well regulated, as they vociferate, the town and its garrison would not have been in the situation in which I find them.

"I do not believe that your Excellency can be persuaded that my intention is or can be, that the city of Alicant should not contribute its due proportion. It has done it, and it will continue giving proofs of its zeal and attachment to the cause, and if the authority from which the statements made to your Excellency are derived, had done its duty at a period of order, your Excellency may rely, that the state of its garrison would be very different from what it is, and in the event pointed out, there would be no want of flour for the divisions of Whittingham and Roche; for the funds of this custom-house, and principally those of Torrevieja, where the most trade is transacted, joined to those produced by the districts free of the enemy, were sufficient; but upon this point the Spanish government will adopt the measures it may deem expedient; it will correct the abuses that have taken place, and in the mean time, and till its determination be received, I will make use of the resources of this district, so as to prevent the military duties from being neglected as they have been hitherto.

" I have the honor to be, with the greatest consideration, your Excellency's attentive servant, who prays to God to preserve your life many years,

(Signed) "JOAQUIN CAAMANO."

"Alicant, 19th Septr., 1812."

The English expedition was composed of a motley crew of different nations, to which were added, two divisions under two English officers of the names of Whittingham and Roche: they held the ranks of Captain or Lieutenant-colonel in the British, but had got the rank of Major-general in the Spanish service, in consequence of the great influence they represented themselves to have at home, and the means that the English government appeared ready to put into their hands.

The embassy at Cadiz, made an engagement with the regency to clothe and equip these two divisions, which were, however, to receive pay in the same manner as the other Spanish troops from the Spanish exchequer, that is, they plundered the country in the same manner as the Spanish troops; but as the latter were half naked, whilst these divisions were absolutely sinking under the weight of clothes, and dressed in the most gaudy and fantastic manner the Spanish troops appeared driven to commit excesses, whilst Whittingham and Roche's men appeared to plunder for pleasure, and the odium of their conduct attached entirely to the English army, of which they were considered as forming a part.

On the 16th October, I received an invitation from the British officers of the garrison

of Alicant to a ball, which was given in the town-house: on my arrival, I only met a number of officers walking up and down, apparently surprised at no ladies appearing, which they were accounting for in different ways. I told one of the officers, who directed his conversation particularly to me, (he is the person whose name I have not been able to find out, who accompanied Colonel Adam to my house on the 18th December) that I was acquainted with the governor and would enquire of him the reason of the ladies absence; this officer said, that my making the enquiry would much oblige him: I went to the governor, at the residence of General Copons, and found him in the anti-chamber; I told him how things were situated at the town-house, and that it appeared as if there was an intention to shew a marked slight to the officers: the governor said, that he should be very sorry that any thing of the kind should occur, that he knew nothing about it, and that he would make it a point, as soon as the business about which he was engaged was concluded, to go to the ball, in order to prove there was no want of respect on his part. As I was retiring, I met Mr. Strange, who told me he was cited to the meeting of the Comision de Gobierno, and asked what he should do in case it was a call for money; to which I replied, that he should say he could not resolve upon any thing without first consulting me. On the subsequent morning, I met Mr. Strange in the street; he informed me, that the meeting of the night before, had been to raise peremptorily a sum of 300,000 rials vellon, absolutely necessary for the immediate wants of the garrison of Alicant; that about 180,000 had been subscribed by the merchants present, of which 80,000 by him in the name of Moore and Co., who had moreover been named with Raggio Brothers, to assess the remainder of the sum upon the merchants who had not attended: I immediately expressed my surprise to Mr. Strange, not only at his subscribing, but still more, at his not having objected to have any thing to do in assessing others. I then learned from him, what was fully confirmed to me by others, that the friends of the Comision de Gobierno and enemies to the governor, had represented to the merchants, that the garrison had been put under arms, to intimidate them and oblige them to subscribe, under the penalty of being sent prisoners to the castle. I was convinced that this representation was false, and therefore requested Mr. Strange to leave the business to me to settle. I then called upon Don Manuel Raggio, whom I found equally displeased and alarmed at being obliged to act in this business. I proposed to him to accompany me to the governor's, and to state to him, that as the constitution he had sworn to establish prohibited any arbitrary exactions, we would not in any way be made a party to assessing others. We accordingly waited upon the governor, who in answer to this statement, replied, that he never considered it as an arbitrary contribution, but as a free loan negotiated between the merchants and the Comision de Gobierno, upon certain conditions, to which he had assented. Mr. Raggio having assured the governor, that it was the general idea that the putting the troops under arms had been a threat against the merchants, he expressed the greatest astonishment, and said, that so far from his personally wishing the merchants to come forward in that manner, he would have preferred their not doing it, as his only object was to oblige the Comision de Gobierno, the authority legally invested with the power of raising money to provide for the subsistence of his garrison, which he was satisfied could be done with the funds at its disposal. He at the same time, testified the utmost anxiety to justify himself to the inhabitants. The chief of the staff, proposed as the most efficacious means, to print and publish a proclamation stating the truth, and drew up one which Mr. Raggio and I thought would be satisfactory; the governor immediately signed it, and told me that he would be much obliged to me to have it printed; for which purpose, an order to the printer, also desiring it to be inserted in the next Diario. When it was printed I perceived that his secretary and dependents did not seem inclined to obey his orders to have it posted immediately, though the chief of the staff said it was very important it should be done before twelve, when the shops were shut, and people retired to dinner. Upon inquiry I learned that in order to post them it was necessary first to find the *pregonero*, or town-crier, as it would be beneath any other person's dignity to do it. I said that if that was the only difficulty I would obviate it, and I posted one at the four corners in the principal street where persons were in the habit of assembling. Mr. Raggio and I then told the Governor, that if the loan of 300,000 rials was to be considered as voluntary, we had no objection to enter into a settlement of the terms, and propose to the other merchants to complete it; but that for this purpose, it would be necessary to have a certified copy of the terms agreed upon on the night of the 15th. The Governor gave us a note to the Intendant to furnish it. After some delays and difficulties, we received a statement, certified by the two secretaries of the Comision de Gobierno Buch and Arrieta to be a literal copy taken from the journal of its sessions. Having reasons to doubt that the paper was what it was stated to be, we insisted, as we were advised we had a legal right to do, upon inspecting the journals. We went to the office of the Comision, and met there Mr. Tupper, with one of the Secretaries, Don Antonio Buch. On inspecting the journals, we discovered that the

statement delivered was not inserted in them, it being only a copy of an imperfect sketch upon two loose sheets of paper, upon the second of which, instead of the signatures of the seven members of the Comision, present at the meeting of the 15th, as certified, there were only those of four, not including the Intendant's, whose assent was absolutely necessary to legalize the transaction. After some observations on what we saw, a species of wrangle arose between Mr. Tupper and the secretary, who in a threatening tone told Mr. Tupper, that the Intendant would sign it. On the subsequent morning, Mr. Reggio and I gave in a written memorial of what had occurred, and declined acting any further.

In consequence of these proceedings, the Comision de Gobierno came to a resolution of calling a new meeting respecting this loan. At twelve o'clock on the 22d October I was cited. At this meeting there only appeared, on the part of the Comision de Gobierno, the two judges, the two Spanish gentlemen, and the Intendant, with the secretary Arrieta. I stated that I did not wish to have any thing to say to the political differences that might exist; but that if the present was a call for a voluntary loan, I had a right to demand that it should be clearly specified, and a proper contract drawn out, stating the legal title of the Comision to borrow, and the terms they stipulated for repayment, to all which the Intendant agreed; and after some resistance on the part of the Judge, Cosar, who presided respecting the phraseology, which he wished to twist to certain political purposes, the session closed. The other judge, Alpuenti, wrote down what was agreed upon, which he read aloud; it was agreed, that as it passed the dinner hour, and there was not time to make a fair copy, the members of the Comision present should put their initials to the blotter, and one of the merchants sign it in the name of the rest. I agreed to subscribe the remainder of the loan required on the terms stipulated, after having accompanied the secretary to the house of General Copons, and got his assent. I returned into the room where the meeting had been held, a little after it broke up, and found Judge Alpuenta and the secretary still there, upon which I expressed a wish to take a note of the stipulations in the paper he had written and read. Upon looking at the different amendments and interlineations, I saw one which I immediately told the Judge he had not read, to which the secretary was obliged to assent. Knowing that this alteration would not be acceded to by the other members of the Comision, I took, in their presence, upon a piece of paper, an exact copy of every amendment and interlineation in the Judge's paper. On the subsequent day, I called to see if the act so passed had been duly registered; but upon reading it in the book, I found it quite altered; upon which, by the advice of my lawyer, I presented a memorial stating this fact, and demanding a copy as before, which memorial I read to each of the members of the Comision present at the meeting, and then delivered it to General Copons.

On the 31st of October, I received a note in the name of the Comision de Gobierno, signed by Judge Alpuente and the secretary Arrieta, stating that in consequence of my not having come to two meetings summoned by the Comision on the preceding evening and that morning, the business of the loan had been concluded with others, to which I simply replied, by the advice of the same lawyer, that I had not been summoned to either of these meetings, or I would certainly have attended.

During the period that this business was arranging, the Governor had given orders not to permit the individuals of the Comision de Gobierno to leave Alicante, as the Friar Rico had done, till the conditions of the loan were finally settled. This order gave rise to the following letter from Mr. Tupper to the Governor:—

(TRANSLATION.)

"Yesterday morning I went to take a walk through the gate of St. Anne, and the Lieutenant of the 2d regiment of Majorca, Mr. John Miras Peralta, prevented my going out by order from Y. L.

"This evening, about five, I was going to take a walk outside the gate of St. Francis, and another officer presented himself to me, who repeated the same order. I inquired whether he was the officer on guard, and he answered *in the negative*. I asked him for the order of Y. L. *in writing*, in order, in that case, to obey it, and he replied that he had it not, it being *verbal*. I inquired again for the cause of my arrest, and he told me that he *was ignorant thereof*.

"Seeing that all this was contrary to the constitution, I thought that the order was mistaken or misunderstood, and under this idea, I attempted to continue my walk; but the said officer called upon the officer on guard for assistance, and upon the slightest insinuation from him, I obeyed; but having met by chance an Escribano there, I called on him for a testimony of what had taken place. It appears, therefore, very proper to me to inform Y. L. of this event; and I hope that Y. L. will tell me what cause exists for so strange an arrest; and if Y. L. had had the goodness to notify to me your determination, I would not have suffered the disgrace to have my character of a member of the first authority in the province outraged; and my representation of consul of H. B. M. in all these ports, according to an exequation granted by the Regency of the Spains, which, as your L. cannot be ignorant of, entitles me to certain exemptions, prerogatives, and liberties compromised.

"If the representatives of this province thought that my service might be useful to the country, and demanded that I should be named an individual of the government thereof (to which the Regency acquiesced), I accepted the nomination, with the object of continuing to employ my weak endeavour for the benefit of a nation which has honoured me so much since its glorious insurrection; but neither the representatives of the kingdom of Valencia nor the Regency, intended to compromise the decorum and the dignity of my representation of Consul of H. B. M., nor could I ever have expected it.

"For the space of above four years that I exercise the two above-mentioned employments, I have always merited the approbation of my conduct by the supreme government of Spain, and I have never seen myself situated as at present.

"I therefore hope, that on Y. L. acquainting yourself with the contents of this official note, you will be pleased to answer me whether you really gave orders at the gates to prohibit my passing through them; and at the same time, what reason (for I am ignorant what it can be) has caused this your determination.

(Signed) P. C. TUPPER.

"Alicante, 19th October, at 9 and half at night of 1812.

"*To Don Joaquim Caamano, Governor of Alicante.*"

(TRANSLATION.)

ANSWER.

"I reply to your official note of yesterday that the officers who prevented your passing through the gates, had in reality such orders from me, and that they will continue to have them till the completion of what was contracted and agreed upon the night of the 18th, because the state of this fortress and its garrison so require, which is the first object to which the Commission of Government should attend, and that I have found myself under the necessity of taking this step by the deceitful conduct of the member of the Commision Rico, who absented himself in a manner so unworthy of the representation he was invested with, and by the well-founded grounds I had for believing that you proposed doing the same, in order to repair with Mr. Joseph Canga Arguelles, and Mr. Joseph Lopez de Cozar to Torrevieja, and thus annul and prevent the execution of what was stipulated, and compromise the commerce of this place. I inform you with the greatest frankness and precision the reason for not permitting your egress from this city, it being understood that it is as Member of the Commission, and not as Consul, for the character of this employment is not to serve as a shield to prevent your complying with that of Member of the Commission, which is the light in which I consider you whilst treating on the present subject; and if you did not chuse to consider yourself responsible for the obligations of Member thereof, being Consul, you ought not to have accepted the nomination, but having accepted it, it becomes necessary to fulfil them. God, &c.

(Signed) "JOAQUIN CAAMANO.

"Alicant, Oct. 20, 1812.

"*To Dn. P. C. Tupper.*"

Perceiving that whilst this business was going on the moment of my leaving my house or counting-house was watched to leave some message for me, and that the persons so sent pretended to mistake Mr. Strange for me, and vice versâ, I requested of Mr. Strange (after having desired him by a note on the 25th of October to take no steps on any point in which I was concerned without first consulting me *in writing*) to remain at his house or lodgings in the country till I sent for him.

Finding that the officers who came to my mercantile house were not satisfied with leaving their horses in the street, but took them into the entrance, and tied them to the stair-case, to the danger and annoyance of those who came to my counting-house, I desired Mr. Strange's servant to take away his horse immediately from the stable, and locked up the street-door, which I subsequently walled up, making the entrance through a gateway adjoining to the garden. A few days after receiving the note from the Comision de Gobierno of the 30th October, I wrote to the governor requesting repayment of the thousand hard dollars Mr. Strange had subscribed, but which I had lent him on his personal promise of repayment. He sent me the following answer:—

(TRANSLATION.)

"My esteemed Friend,

"I delivered the receipt of the 20,000 rials vellon to your correspondent Mr. Patrick Moore, for I have left nothing undone to make a return for the generosity with which you offered to anticipate the delivery of them; for which I am very thankful; which will serve as an answer to your note which I have this moment received.

"I remain your attentive servant, W K y h

"5 November. CAAMANO.

"*Sor. Dn. Tomas Moore.*"

I immediately wrote to Mr. Strange as follows:—

"Alicant, 5th Nov. 8 P. M. 1812.

"My dear Sir,

"Having called upon the Governor for the 20,000 rials of vellon which I lent him about a fortnight ago, he sent me an answer of which I annex a copy. I will thank you to explain the meaning of it, as I really do not

understand it; but I suppose you must be my 'Correspondal Dn Patricio Moore.'

"Yours cordially.

"P.S. Let me know if you want any thing I can send you, as I think you had better continue to rusticate for a few days more. How is the vintage in quantity and quality?"

Mr. Strange's answer was as follows:—

"Condomina, 6th Nov. 1812.

"My dear Sir,

"I this moment received your letter of yesterday's date. In reply, the receipt for ron. 20,000 given me by the Governor, I delivered to Frasquito, the cooper's wife, who has it at your call; having come away so suddenly that morning, I did not recollect to hand it over to you. I think it comes in place to now mention to you, that in consequence of idle reports made to the Governor respecting you, I called that morning on the G——r, to assure him that he need not give any attention to such stories; that it was true, and could not be otherwise, you felt and most sensibly, and were truly hurt, at the unjust, partial, and tyrannical manner, in which you found your houses and warehouses occupied. Having, as you know, come here so suddenly, (for I found the house in Santa Fas occupied by an officer,) I am in want of some cloths and other trifling things, which, agreeably to your hint, I shall take the liberty to send you a note of by another opportunity not to detain the bearer. And once I have the satisfaction to know it is not disagreeable to you my remaining in the country. I shall continue here (as you say) rusticating as long as you find it convenient. If I can keep free of intruders, I shall henceforward with pleasure enjoy my solitary walks. The country still maintains its verdure, and is enchanting; but the fine weather continues, which contributes to make it more pleasant.

"Believe me, sincerely,

"My Dear Sir,

"Your affectionate humble Servant,

"PAT. STRANGE.

"P.S. The farmers pretend that the troops have made away with nearly half the vintage; still it would appear the produce is a middling good one; and as it has been got in with favourable weather, the quality of the wines should be good.

"7.45 A. M."

I was a good deal surprised at the contents of this letter, which I sent to Mr. Athy, with a request that he would put it into Spanish. I sent his translation of it to the Governor, and I thought that the best comment I could make on Mr. Strange's supposition of my feelings and sentiments was the following offer, which was inserted in the Diario:—

"It is now four weeks since I presented, by the hands of the Alderman Mr. Francis Peres, to the Common Council of this town the constitution of the Spanish monarchy, printed on four sheets, to be placed in the view of the public; but it has not yet appeared. I now offer you, as its President, to have the effects that occupy the principal entrance of the town-house fronting the Plaza del Mar, taken out and put in a warehouse calculated for their preservation and safe custody, at my own expense, upon condition that the four sheets of the constitution be immediately returned to me, in order that they may be placed in said entrance, for the convenient inspection of all persons concerned.

"God preserve you many years, &c.

(Signed) "THOS. MOORE.

"*To the Governor of Alicant.*"

From the time of my arrival at Alicant, I found it as difficult to make persons there understand that it was possible to act from disinterested motives, as according to appearances, it would be to make Mr. Attorney-general or my learned Serjeant believe it. After two or three attempts to make those who came to sympathise with me upon the horrid injustice I experienced, comprehend that it was not so much at the possession as at the application of my houses, warehouses, &c. that I was dissatisfied, I desisted from saying any thing more upon the subject. If the expenditure of the sums furnished by the embassy to its agents on the part of Spain was properly investigated, it would appear that General Roche might have paid for a decent lodging for himself, without acting in a way that no French general would have done; and that Mr, Tupper could have afforded to do the same at Montfort, instead of exacting for himself and his friend Friar Rico 14 rations each a day (amounting to nearly as many dollars) from the inhabitants of that small place, whilst they remained shut up in a house there in August and September, 1812, procuring intelligence for Mr. Vaughan. In the same manner the lofts of my principal warehouse, which could contain six or seven cargoes of goods, were, by a sort of compromise, retained when the warehouse itself could not be kept any longer, for as much clothing from the English embassy at Cadiz (for the name of English was to cover every thing oppressive or unjust) as could have been contained in one large room. Two other large warehouses, in which a thousand men had been on a former occasion quartered, were occupied with a few artillery-carts, which might just as well have been in the open air. The warehouse adjoining my mother's house, in which two temporary mills had been erected, only served as a roost for a few fowls, whilst the second floor of the town-house, though much better calculated for quarters, was turned into store-rooms for the English, and the entrance of it was filled with barley for the English also. This an-

swered the double purpose of preventing the Ayuntamiento or Common Council from assembling in the public hall, and of attributing to the English not only this hindrance, but the annoyance from carts coming on the flagging before the town-house, which was the public walk.

On the 31st of November Mr. Strange having occasion to come to Alicant, dined at my house, when I requested of him to inquire the prices of wine in the Huerta, with any particulars he could collect, and to inform me thereof. On the 30th November he wrote to me as follows:—

"Santa Fas, 30th Nov. 1812.

"My dear Sir,

"Until two days ago, that Epasna and Gadea have given orders to purchase wine at 100 C. B. per ton in the Huerta, no buyers offered any price, excepting 95 a 100 that was paying for the shops. I do not expect the article will be under these prices, unless there be no purchases made for two or three months to come, which is not at all probable, as the consumption for the troops and in the country is considerable.

"I am very sincerely,

"My dear Sir,

"Your obedient servant,

"PAT. STRANGE.

"*Thomas Moore, Esq.*"

I had agreed to deliver 20,000 cantaros of wine to Mr. Daniel the commissary. Previously to that agreement, the following transaction took place between us. I called upon him to know the terms upon which he would give me bills on the Treasury, and found him tête-a-tete with General Roche, who rising up upon my coming in, told Mr. Daniel he must leave the room whilst that fellow was there. Mr. Daniel, after telling me he had understood I was gone to Mahon, declined giving bills through a broker, thinking it his duty, as he said, to save that expense to the public; so that, in order to avoid any mistake, I thought it better to have his answer in writing, particularly as I told him I was resolved to take the bills by a broker on the 31st October, I addressed the following letter to him:—

"Alicant, October 31, 1812.

"Francis Daniel, esq.

"Mr. John Salasar, broker, of this city, has brought us firsts, seconds, and thirds, of the nine inclosed bills of exchange. We find the two noted at foot quite different from the remainder. We should therefore wish to have them changed for bills similar in every respect to the other seven. We have to observe that the one for 300l. stg. No. 7,269, dated Palermo, Sept. 5, 1812, is in print; whilst the one for 1,000l. No. 7,333, Palermo, Sept. 7, 1812, is in copperplate, which could only be in consequence of the impossibility of getting the copperplate ready for the 5th of September, and even that supposition is in a great measure rendered improbable by the *year* marked on the bill for 1,000l. being evidently *partly* in copperplate, *partly* in writing, and *partly* erased. Under these circumstances we cannot forward these drafts to our correspondents without a special guarantee from the Commander-in-chief of His Majesty's forces at Alicant.

"We are respectfully, &c.

(Signed) "MOORE and Co."

Instead of making any reply in writing, a foreigner, apparently an Italian, presented himself to me at my private house, with the bills I had sent to Mr. Daniel, telling me that he advised me to take them. I requested him to beg of Mr. Daniel to send to my house an answer in writing. But not hearing from him I sent him the following letter:—

"Alicant, Nov. 3, 1812.

"Francis Daniel, Esq.

"Not having been favoured with any reply to our letter of 31st ult., we beg leave to trouble you with a copy of it, and to state that we shall, in all probability, pay a further sum into the military chest to-morrow morning, in order to be able to forward the drafts we may receive from you by the Cadiz post of the ensuing day.

"We are very respectfully, &c.

(Signed) "MOORE and Co."

I again addressed him on the 4th as follows:—

"Alicant, Nov. 4, 1812.

"Francis Daniel, Esq.

"We find that besides the above-mentioned nine bills for five thousand pounds sterling, we have taken eleven more from you since the arrival of our Mr. T. Moore, amounting to six thousand seven hundred and forty pounds sterling; and as the broker we have employed has our orders to take from twelve to fifteen hundred pounds more this day, we expect some satisfaction respecting the irregularities we have noted in some of these bills.

"We are respectfully, &c.

(Signed) "MOORE and Co.

"P.S. We had written the foregoing lines when we were favored with your letter of this date. We shall in consequence send forward a copy of our correspondence to Messrs. Baring, Brothers, and Co. of London, with the thirds of the bills in question, to be laid before the Lords Commissioners of his Majesty's Treasury, and deliver a duplicate thereof to the Commander-in-chief of his Majesty's forces here.

"Yours respectfully, &c.

(Signed) "MOORE and Co."

Mr. Daniel's letter was as follows:—

" Sir, Alicant, Nov. 4. 1812.

" I herewith return you your nine bills, after having examined the defects which your sagacity has found out. As I have negotiated thousands and thousands of pounds with the same defects and without causing the least deterioration in the value of my bills, I must refer you to the Lords of his Majesty's Treasury for more ample information.

" I am, Sir,
" Your obedient humble servant,
(Signed) " F. DANIEL,
" D. C. G."

As these bills were taken for account of Mr. Philip Robin, of Jersey, my house wrote to him as follows:

" Alicant, Nov. 7, 1812.

" Philip Robin, Esq.

" We remitted you, on the 31st ult., 2nds of 9 bills for 5,000l., on the Treasury, of which we now enclose thirds; but having perceived an essential difference in the former of these drafts, we thought it our duty to enter into an explanation with the Deputy-commissary-general of his Majesty's land forces here, which we confess has not by any means proved satisfactory to our minds. We therefore enclose this letter with a statement of what has passed to our friends Messrs. Baring, of London, that no time may be lost in laying it before the Lords of the Treasury. We further enclose another draft at thirty days sight for 600l. on the Treasury, which is of the same nature as the one that appeared to us particularly objectionable before, and all we can add is, that if the Lords of the Treasury authorise the issuing of such drafts to a Commissariat on a roving expedition, they either do not take common precautions to guard against fraud on themselves, or they are willing to leave a door open for its being committed on others.

" Yours most truly, &c.
(Signed) " MOORE and Co."

A few days after this I received different anonymous letters, stating that Mr. Daniel spoke of me as being mad. I sent these letters to be inserted in the Diario, with a remark or two, stating I did so for the satisfaction of the writers of them.

Just at this time I saw a printed paper posted up in different quarters of the town, purporting to be from the Commissary; in consequence of which I wrote him as follows:

(TRANSLATION.)

" Sir,

" Having seen an advertisement on the corners of the streets as follows:

" ' Whoever wishes to contract for 20,000 cantaros of " Vino Tinto" of good quality of last crop of the territory of the Huerta to be delivered into the warehouses of H. B. M. in Alicant in all the month of December next, may make his offer in writing to the Deputy-commissary-general of the British army at his office. The offers must be presented shut and sealed. More particulars upon the subject may be obtained at said office.'

" We wish to know where the warehouses of H. B. M. into which the delivery is to be made are, because the greater or less convenience in unloading the wines will influence something in the price. And we shall also be obliged to you to be so good as to order to be communicated to the bearer of this letter such further particulars as you may think proper to give upon the subject.

" God preserve you many years,
&c. &c.
" We did not see this advertisement
till this morning early "

I wrote this letter in Spanish, the advertisement was in that language. " Vino Tinto" might mean red wine in other parts of Spain, at Alicant it meant the particular wine destined for the Bourdeaux market, or to make Tent, which is at least double the price of the common red wine there called Aloque. Many persons thought the former wine was meant in the advertisement, and the condition stating that it was to be of the last crop but very lately vintaged, led to that conclusion, for though it might be better for giving body and colour to other wines, it could not be better for drinking. Mr. Daniel answered my letter as follows:

(TRANSLATION.)

" Alicant, Nov. 14, 1811,

" Sir,

" In answer to your letter of this date, I have to say that the wine mentioned in the bills posted, is to be delivered into the warehouses of his Britannic Majesty in Alicant. I mean to say within the city, or within the walls of the city.

" God preserve you many years, your most affectionate servant,
" F. DANIEL.
" D. C. G.
" *Messrs. Moore and Co. Alicant.*"

As in this letter he stated no farther particulars as offered in the advertisement, I wrote to him as follows:

" Alicant, Nov. 14, 1812.

" Sir,

" In answer to our letter of this morning you tell us that by the warehouses of his Britannic Majesty in Alicant, you mean within the city, or within the walls of the city, which will serve for our government, but no farther particulars have been given to the person who carried our letter,

been laid hands on, with exceptions of a certain nature, and we have observed whole drives of them and strings of carts, employed in what we should think a way less likely to be of service to his Majesty's troops. If you wish the delivery of the wine we have contracted for to take place before the 31st day of this month, we shall we fear be under the necessity of requesting you to receive it in the Huerta itself, instead of within the wall of Alicant, where indeed we can lodge it so as to cost as much to get it out as to bring it from the Huerta.

"We have the honour to be, &c."

"Alicant, 15th December, 1812.

"Sir,

"I am favoured with your letter of this morning, and in reply shall as I have before observed (in consequence of the derangement of rural economy) do all I can to accommodate you in the way of carriage; and as some of the troops are quartered at Muchamiel and Santa Fax, I will receive what wine may be necessary for them in the Huerta, giving the regular information when it is to be delivered.

"Have you any good Holland proof Brandy for sale?"

"I am, Sir,

"Your most obedient servant.

"F. DANIEL."

The meaning of my letter of the 25th in plain English which I conceived Mr. Daniel to have understood by his answer, notwithstanding his talk of "the derangement of rural economy," was as follows:

"We have received your letter of the 14th inst. by which we see that you are resolved to evade answering our questions; we are therefore convinced that you prefer to the open method for contracting for supplies, the method you are following by which the whole of the inland trade is placed in the hands of those individuals who are provided with your printed licences in the name of his Britannic Majesty. In consequence we think we have sufficient grounds to refuse supplying you with any wine as you have not kept to the implied condition of our contract. You have not executed any instrument, or supplied us with any document upon which we could sue you. We are however resolved to fulfil our engagement as far as you have left it *possible*, relying upon the justice of the English government for remuneration for any loss we may experience. Although you have whole strings of cattle with their carts idle in the square adjoining our counting-house, you know that every four-footed beast is seized upon by you in the name of his Britannic Majesty, with the exceptions of those belonging to persons who know how to manage to get protections. We therefore feel ourselves compelled to state, that unless you agree to take the wine in the cellars in the Huerta, where you stipulated that it should be purchased, and from whence you make it impracticable for us to bring it; we will not undertake the purchase of any, to which we may add, that it might be placed within the walls of Alicant, (the words of the Bond) in a situation from which it would cost you more to retire it than to bring it from the Huerta, considering the means at your disposal."

On the receipt of Mr. Daniel's letter, consenting as I understood it, to take the wine in the Huerta, I wrote to Mr. Strange to purchase immediately 10,000 cantaros, the following is his answer:

"Santa Fax, December 17, 1812.

"My Dear Sir,

"In reply to your letter of ——, received this moment, I shall take immediate steps to comply with your order for the purchase of one hundred tons of Aloque wine, and advise Messrs. Moore and Co. at the Baranquet of the progress I may make. I have been confined for some days past with sore eyes, I am however now getting better of them. I believe Messrs. Bushell and some other houses are buying up wine, but I cannot say at what prices; it will be requisite therefore to act with some prudence to prevent as much as possible prices being run up.

"I am, respectfully,

"My dear Sir,

"Yours, &c.

"PATRICK STRANGE."

Thomas Moore, Esq.

On the 18th of December the following letter from him was received at my counting-house:

"Santa Fax, Dec. 17, 1812.

Messrs. Moore and Co.

"Gentlemen,

"I have engaged ten tons of wine of the Baron de Finistrat at 106. per ton, and moreover I am to pay 9 Roon agency. He does not knowwho is the buyer, as it seems your prior had made some proposals to purchase, but he (Baron) would not sell, nor will he any more for the present.

"The needy farmers have already disposed of their parcels, and the others now demand high prices, some as high as 120, and others prefer looking forward a little.

"Montgomery and other houses are actually paying 106. Bushells have nearly secured two hundred ton at 100.

"I shall lose no opportunity in engaging further parcels, in the mean while I would

recommend your not sending for any until the whole of your order be nearly engaged.

" I am respectfully,

" Gentlemen,

" Your most obedient servant,

" PATRICK STRANGE."

It must appear to any unprejudiced person that I who had suffered most by the military, and was at this very period contributing more to their support in one way or other than any other person, merchant, or otherwise at Alicant, was " picked out" to be held up as " the head of a party in opposition to the English," and as Colonel Adam selected for his unprincipled proceedings the time at which I was pressing Mr. Daniel to come to some understanding as to his future conduct on the subject of the contracts, I possibly might well imagine without a " disposition to see every thing with a jaundiced eye," a " determination to see every thing wrong," or indulging " in making visions or day dreams." That a plan had been laid to prevent me if possible from fulfilling this supposed contract, and then represent " the soldiers as dying exhausted by the road sides," when " a great part of the army must have died for want of support," in consequence of my breach of contract.

I might the more easily have given way to this " touch of imagination" as Mr. Daniel, though he stated to my house that " he must defer answering my question upon the subject of wine until the arrival of the Commissary-in-chief, who was expected shortly ;" gave at this time *verbal orders* to other merchants to purchase wine for him, as they subsequently told me. The Commissary-general never arrived, and Mr. Daniel never advertised another contract, except one for the offals of the beasts slaughtered for the use of the troops. He preferred seizing the means of transport, agreeing for the articles he wanted, and then giving printed licenses in the following form which operated as a bonus, as it enabled the holders to carry the salt fish and other imports from Alicant to such distances, as the carriers from the interior, terrified by the reports of Mr. Daniel's embargo act dared approach.

G. R.

" I certify that *Don Josef Puyatte* in the town or village of *Monforte, with three waggons and four carts* is embargoed for the service of his Britannic Majesty, and is not to be molested upon any account.

" (G. R.) Alicant, Nov. 20, 1812.

" F. DANIEL."

D. C.

Whether this plan was chimerical or not, I was determined it should not succeed, and therefore before I left Alicant, I wrote the following letter :

" Alicant, Dec. 19, 1812.

" *F. Daniel, esq. Deputy Commissary-general at Alicant.*

" Sir,

" We have been honoured with your letter of the 15th inst. and have now to inform you that there are ten tons, or one thousand cantaros of wine in th cellar of the Baron de Fenestrat in the Huerta, at your disposal, in part of our contract with you. Mr. P. Strange at Santa Faz, will point out the cellar to any person authorised by you to receive them, and give him any other assistance in his power on this letter being presented to him.

" We are, &c.

" We have no brandy, but we have a distillery at Santa Ana which might easily be put in repair."

I also left orders that as fast as Mr. Strange advised any purchase, a similar letter should be transmitted to Mr. Daniel, placing the quantities so purchased at his disposal. In consequence the following letter was addressed to him:

" Alicant, Dec. 21, 1812.

" *F. Daniel, esq. Deputy Commissary-general at Alicant.*

" Sir,

" Referring to our last of the 19th inst. we have now to advise you of our having engaged the following parcels of wine, viz.

25 tons Hacienda de Cassou Condomina.
7 Id — — — — Id al lado de la Carrera.
13 Id — — — — Id partida de Almagada.
7 Id — — — — Bellon Fabrequet.
12 Id Raval Roig.
12 Id Par. de la Cock termino de Muchamiel.
—
76

Together seventy-six tons, or seven thousand six hundred cantaros at your disposal in part of our contract with you. We repeat that Mr. P. Strange at Santa Faz will point out the cellars to any person authorised by you to receive them, and give every assistance in his power on this letter or our preceding one being presented to him.

" We are very respectfully, &c."

Having taken up my abode in the convent of Orito on the night of the 19th of December, I wrote to Mr. Strange the next morning, requesting him to repair to Alicant, and to take upon himself the management of my mercantile affairs under my direction, but as I had given formal notice that I had not signed any partnership, and that no person was empowered to use the signature of " Moore and Co." but myself, I stated that I would send him my Power of Attorney immediately on his repairing thither.

Mr. Strange answered me on the 21st December as follows :

"Santa Fee, December 21, 1812.

"My Dear Sir,

"Now near two o'clock, P. M.

"Your favour dated L'Orito, 20th instant, has been delivered me by the bearer. In reply, I shall repair this evening to Alicant, and have only to add that I shall act in the manner you point out, and meet your ideas as far as lays in my power; and if I should not succeed, I flatter myself that you will be convinced it will not be for want of a good will, and wish of accommodating you. On the other hand I have not a doubt you will continue treating me in that friendly, confidential, and gentlemanlike manner which I have for these years experienced from you, and as such be assured, that I am with great truth always at your command. "My dear Sir,

"Your obedient servant,

"PAT. STRANGE."

After his arrival at Alicant he had some communications with Mr. Daniel respecting the 86 tons of wine. Mr. Daniel it seems pretended that I should pay him the expense of bringing it to Alicant and other charges, which I wrote I would not do, and then Mr. Daniel consented to give Mr. Strange receipts for it in the cellars, but I am perfectly ignorant of what further occurred, except that I know that a parcel of fish, value about 3000l, sterling was seized in my store by the mercantile tribunal to which Mr. Daniel went to protest for damages against me, and sold by public auction to pay for wines purchased for my account. Having investigated the quality of the wines Mr. Daniel was getting from the neighbourhood of Monforte, *and got samples of it properly corked up*, out of the carts that were conconveying it under the protection of his printed licences. I wrote the following letter:

"Alicant, Dec. 22, 1812.

"*F. Daniel, esq. Deputy Commissary general, Alicant.*

"Sir,

"Not having received any reply to our letters of the 19th and 21st inst. we have now to request that you will inform us whether you are willing to take about 2000 cantaros of Catalan wine of perfect quality, and in our opinion much superior to that of the Huerta for immediate drinking, as part of our contract for 20,000 cantaros. We will send you a sample of it.

"We are, &c."

On the 24th I sent Mr. Strange the advertisement already stated to get inserted in the Diario. The following correspondence passed between Mr, Daniel and my house:

"Alicant, Dec. 26, 1812.

"*F Daniel, esq. Deputy Commissary-general Alicant.*

"Sir,

"We request you will furnish us with bills on the Lords Commissioners of His Majesty's Treasury for the amount of the 86 tons or 8,600 cantaros of wine, which we have placed at your disposal in the Huerta.

"We have the honor to be,

"Sir,

"Your most obedient and humble servant,

"*For Messrs. Moore and Co.*"

"JAMES BUDD."

P. S. We wish to know whether you require, peremptorily, the complement of our contract before the end of the month, and if not by what time.

"Alicant, 26th Dec. 1812.

Gentlemen,

"I duly received your letter of this day's date, and have the honour to inform you the quantity of wine you mention is not at my disposal, which Mr. Strange will communicate to you; that gentleman has also refused to deliver any more wine until your answer is received relative to a *very trifling breakage* on the transport to town; which of course as I accommodate you with carriage, no difficulty should be started by that gentleman, as soon as your contract is completed, will grant you the bills on the Lords Commissioners of the Treasury for the whole amount.

"I wish the wine to be delivered with all possible dispatch, but as a further accommodation to you I will extend the whole delivery to the 15th of next month.

"I have the honour to be,

"Gentlemen,

"Your obedient humble servant,

"F. DANIEL."

Messrs. Moore. and Co. Alicant.

"Alicant, 28th December, 1812.

"*F. Daniel, Esq. Deputy Commissary General at Alicant.*

"Sir,

"We have been honoured with your letter of the 26th inst. and in reply to such part thereof as regards the 8,600 cantaros of wine which we placed at your disposal in the Huerto, per our letters of the 19th and 21st instant, of which we annex copies, we beg leave to state that we can make no allowances, however trifling, nor be answerable for the consequences of your not having received it.

"We are, Sir, your most obedient Servant,

"per procuration of Messrs. Moore and Co.

(Signed) "AUGUSTIN MORAN,

"*Calle del Baranquet.*"

I found myself obliged to send a Power of Attorney to Mr. Austin Moran, in consequence of the receipt of the following letter from Mr. Strange:—

" Alicant, 26th December, 1812.

" My Dear Sir,

" In reply to your favour of the 24th inst. I have delivered the aviso to Mr. Budd, as I am convinced I would neither be serving you nor forwarding in any way your plans by signing it; and moreover I would be committing myself with the English and Spanish authorities, which I am sure you would not wish me to do. With respect to your orders, I now observe you mean them to be complied literally, which is well. With regard to me, as long as my services are useful I wish to meet your ideas; every attention from me, I look upon it with pleasure as due to you; and I am persuaded you will not insist on my acting in opposition to my own opinion in matters that you may find necessary to encharge me with. I shall attend to your instructions respecting the counting house for the liquidation of the accounts of George Moore and Co. and in my next reply to your further enquiries. I have only delivered 779 Cantaros of wine to the Commissary, as Mr. Daniel says it must be delivered and guaged or measured, say the whole of your contract at this place at your risk. I told Mr. Daniel I had orders only to deliver the wine at the cellars in the Huerta, unless I get receipts for the quantity as delivered at these places, I would deliver no more without your further orders. He desired me just now to send you an express to learn your intention. He has accommodated you in the carriage, which is all he can do. Let it serve for your government; there is from one-half to one and a half per cent. breakage on the transport of wine experienced by the Carreteros.

" I am, respectfully,

" Your humble servant,

" PATRICK STRANGE."

" *Thomas Moore, Esq.*"

I wrote to him, in consequence, as follows:

" Convent del Oreto,
26th Dec. 1816.

" Patrick Strange,

" I have been honoured with your letter of the 26th inst. by which I perceive that you had delivered the aviso to Mr. Budd, as you are convinced you would be neither serving me, nor forwarding in any way my plans by signing it. I shall in consequence give you no more trouble, and only request that you will return into the hands of Mr. James Budd the copy of the Power which he delivered to you.

" I am, Sir,

" Your most obedient servant,

" T. M."

On the 29th the advertisement was inserted in the Diario, and on the 30th I received the following letter frum Mr. Strange:—

" Alicant, 30th Dec. 1812.

" My Dear Sir,

" I have been favoured with your respected letter of the 27th inst. and in consequence I have made up my mind to retire from this country: I have therefore to request of you to have the goodness to give me a bill on London for such amount as you may be pleased to determine that the state of my *account* will be able to face; and if it were agreeable to you to make any arrangement for closing it finally, I shall consider the accommodation as an additional favour conferred on me. In the meanwhile I can only say, that I feel and am sorry the want of capacity to be able to give you future satisfaction has been the only motive that would induce me to a like determination, as be assured I remain with great sincerity,

" My Dear Sir,

" Your assured humble servant,

(Signed) " PAT. STRANGE."

" *Thos. Moore, Esq. Convent del Oreto, Monforte.*"

I replied that it was impossible he should leave the country without liquidating the business of Geo. Moore and Co. and giving me up the accounts of the transactions during his management in due form. It having now become impossible to continue my business in my absence with credit, or even without risking my utter ruin; I resolved to suspend it altogether, but I also resolved that Mr. Daniel should have no excuse for his conduct, I therefore wrote to Messrs. Piguetes to complete the purchase of the 20,000 cantaros of wine, which they accordingly did.

The terms upon which this purchase was made were, that *the delivery of the wine should be made positively on the 31st December*, and that the first 6600 cantaros should be taken out of the cellars within ten days, and the remaining 4800 cantaros within fifteen days after that date, and such parcels of the wine as were not within the walls of Alicant were in the vicinity of Santa Faz, and Muchamiel. The following letter was delivered to Mr. Daniel on the 30th December:

" Alicant, 30th December, 1812,

" Sir,

" We have the honor of transmitting to you, annexed, a note of eleven thousand, four hundred cantaros of wine, stating the places where they will be at your disposal in the course of to-morrow, in fulfilment of our engagement with you.

" We are, Sir,

" Your most obedient servants,

" For Messrs. MOORE and Co.

" JAMES BUDD."

" P. S. Please to fix an hour for the man to

go and shew the different places where the wine is."

"*To F. Daniell, Esq., Deputy Commissary-General, Alicant.*"

2,000 Cantaros en la haccenda de la Paulinas propria de Don Manuel Solar, near Sta. Faz.
2,000 Ditto, en la haccenda de Don Estevan Die, in the environs of Sta. Faz,
400 Ditto, in the country seat called Raral, in the environs of Muchamiel.
650 Ditto, in Mr. Francis Piqueres warehouse within the walls of this city.
1,200 Ditto, in Francis Asensi's house in this city.
350 Ditto, in Josef Valentin's warehouse in this city.
4,800 In the environs of Sta. Faz and Muchamiel;—the cellars will be pointed out this evening.

11,400 Cantaros.

I wrote to the broker inclosing the following letter to Mr. Daniel, and then sent an advertisement to the Diario, stating that the house of Moore and Co. would suspend its business on the last day of the year.

"Alicant, 31st December, 1812.

"Sir,

"You will please to deliver to the bearer, Mr. J. B. Acquilina, public exchange and maritime broker of this city, bills at thirty days sight, on the Lords Commissioners of his B. M's. treasury, to the order of Messrs. Baring, Brothers and Co., of London, for the value of the twenty thousand cantaros of wine, which we placed at your disposal, according to our letters of the 19, 21 and 30th of the month and year on the point of expiring, in virtue of an offer dated 14th November, accepted by you on the same day, and in conformity to the note of its amount, which we place at foot of these few lines,

God preserve you, &c &c.

20,000 cantaros of red wine or aloqui, at 14 ron. per cantaro, and 67d. per hard dollar, 3908*l.* 6s. 8d.

I directed Messrs Pigueres to suspend delivering the wine if they found the broker did not receive the bills from Mr. Daniel; and when I learned he would not give them, I ordered them not to deliver it at all, but finding he was taking it by force, I individually made the following applications subsequently to Mr. Daniel, to which I received the answer annexed.

"Alicant, January 5th, 1813.

"Sir,

"I request you will forthwith deliver to the bearer, Mr. James Budd, 3908*l.* 6s. 8d. in bills on the treasury; if any difficulties have occurred in the delivery of the wine, they are of your raising not mine, but the British people shall judge between us as wellas *the Spanish*, and no other tribunal by God.*

"Your's,

(Signed) "THOMAS MOORE."

"*To F. Daniel, Esq. Deputy Commissary General, Alicant.*"

"Alicant, January 14th, 1813.

"Sir,

"I have ordered Augustin Moran to call upon you for the third and last time for the bills on the treasury, which you engaged to deliver to my late house, and which you refused to the broker on the 2nd and to Mr. James Budd on the 5th instant, in order that I may forward them to Messrs. Baring, Brothers and Co. of London, by a courier (going to Cadiz) to-morrow at 12 o'clock.

"I am, &c.

"*To F. Daniel, Esq., &c.*"

"Alicant, 15th January, 1813.

"Sir,

"I have received your letter of this date of a very extraordinary nature. I must inform you, that the contract entered into by Messrs. Moore and Co. has not yet been fulfilled; and when fulfilled, I must have full proof, that you, or any other individual of that house, are fully empowered and authorised to receive the amount and grant receipts in due official form. Had the contract been fulfilled in the time specified, the amount would have already been discharged; it is not customary for His B. Majesty's commissaries to keep back from fulfilling their engagements.

"I am, Sir,

"Your obedient servant,

"F. DANIEL."

"D. C."

About the end of January being anxious to settle the accounts of the late partnership without loss of time, and finding there was

* The meaning of this letter was, that I would make no demand on him nor go to law with him, in a place where bribery was the order of the day, as he seemed to wish, by going first to a mercantile tribunal to protest against me for damages, and then to a military chief to endeavour to influence him by a fear of offending "the English," to take my property by violence, which he afterwards sent his own myrmidons to execute. I cannot make any good excuse for the termination of this letter; and only cite for it, high authorities upon the woolsack.

no immediate probability of things being properly arranged at Alicant, I requested Mr. Strange to bring out the books, &c. to the Hospicio adjoining the convent, and to bring Mr. Budd and Mr Austin Moran thither to have the accounts closed and the books arranged under my inspection. Whilst this was going forward, I told Mr. Strange that I was perfectly content that he should transact any business that might casually offer for his own benefit, and in his own name; but that I would not consent that mine should be used, till it could be done with honour. Upon this occasion I told him that as I was determined not to enter into any compromise whatever in respect to any of the transactions in which I had been concerned at Alicant, in order to exonerate him from any eventual loss to which he must have considered himself liable, I would take the whole of the dependencies of Moore and Co. upon myself.

Having arranged and settled the books of George Moore and Co. I got a passport on the 11th of March from the Portuguese Consul for Lisbon. I resolved to return to England by Madrid and Lisbon as I had told Mr. Vaughan at Cadiz that I should; but before setting out I went to Alicant to demand a personal explanation from Colonel Adam as already stated.

BRIEF FOR THE PLAINTIFF.

LONDON.

DECLARATION of Michaelmas Term, 55th George 3rd, states:—

FIRST COUNT.

That Defendant, on the 18th of December, 1812, with force and arms, &c. made an assault upon Plaintiff at the town of Alicant, in the kingdom of Spain, to wit, in London, in the parish of St. Mary le Bow, in the ward of Cheap, and did then and there, with a certain stick, give and strike Plaintiff divers and very many violent blows, and compelled Plaintiff, then and there being a merchant, and carrying on great trade and business at Alicant, to wit, in London aforesaid, in the parish and ward aforesaid, from which trade and business he derived great gains and profits, to leave the said town of Alicant, and to relinquish and forego, and by reason whereof Plaintiff did relinquish and forego, the great gains and profits that would have accrued to Plaintiff from carrying on his said trade and business at the said town of Alicant, to wit, in London aforesaid, in the parish and ward aforesaid.

SECOND COUNT.

That the Defendant, on the said 18th day of December, 1812, with force and arms, &c. made another assault on Plaintiff, to wit, in London aforesaid, in the parish and ward aforesaid, and did then and there strike Plaintiff divers other violent blows, to wit, at London aforesaid, in the parish and ward aforesaid.

THIRD COUNT.

That the Defendant, on the day and year last aforesaid, with force and arms, &c., at the said town of Alicant, to wit, in London aforesaid, in the parish and ward aforesaid, seized, took, and carried away, certain goods and chattels, to wit, one bed, six chairs, and two tables, of Plaintiff, of great value, to wit, of the value of 100l. of lawful money of Great Britain, then there found, and being converted and disposed of same to his own use; and other wrongs to Plaintiff, then and there did against the peace of our Lord the King, &c.,

TO PLAINTIFF'S DAMAGE OF 30,000l.

PLEA.

The General Issue—Not Guilty.

Whereupon Issue is joined.

CASE.

The Plaintiff in this case is a most respectable gentleman, possessed of a considerable fortune, and at the time when the assault took place for which and its consequences the present action is brought, had been for twelve years the head of the principal mercantile establishment in the city of Alicant, in Spain, and was then sole manager and proprietor thereof; no commercial establishment, either in that or any other country, enjoyed a higher character.

The Defendant, at the same period, was a Colonel in the British army, and acting Adjutant-general; he is now a Major-general.

In the summer of 1812, the Plaintiff, who had been some time absent in England, returned to Spain to look after his private concerns, and to superintend his mercantile establishment at Alicant, till he concluded a new partnership there, his former one having expired on the 30th of June in that year.

The Plaintiff arrived in Alicant, in his Majesty's brig Rebuff, from Cadiz, in the month of October, 1812, and found four of his warehouses, and the principal part of his mercantile house, occupied for alleged military uses, the allied army being then in possession of the town, under the command of an English General. The Plaintiff found his private house occupied by General Roche's brother-in-law and his dependents; the General himself, who had forcibly and illegally occupied it, being at that time absent. The Plaintiff (after sleeping some nights at his Cooper's) at length got possession of his private house, in virtue of the fol-

lowing order from the Spanish Governor, Brigadier-general Caamano, to Mr. O'Shea, General Roche's brother-in-law :—

" Be pleased to evacuate the house you occupy, and which belongs to Mr. T. Moore, who demands from me possession thereof, offering for the custody of whatever you have under your charge belonging to the Major-general Mr. Philip Keating Roche an adequate apartment in the other house which the said Mr. Moore has in the Baranquet, for I under this date advise the Billeting Committee to furnish you the necessary billet to authorise you to present yourself with it.

" God preserve you many years,
(Signed) " JOAQUIN CAAMANO.
" Alicant, Oct. 11, 1812.
" *Mr. Henry O'Shea.*"

The Governor also got restored to Plaintiff his principal warehouse, which had been lately occupied as a momentary deposit for clothing recently arrived from Cadiz, for Roche's division of Spanish troops, after considerable opposition from those who had it, Plaintiff consenting that a few packages that remained should be deposited in the loft of the warehouse for a little time longer. The Governor had previously, on the 6th of October, passed the following official note to the Billeting Committee, dated Oct. 6, 1812 :—

" It being equitable that the burthen of quarters which the inhabitants of this city are suffering should be equally divided, and according to the capacity and convenience of their houses and property, and complaint having been made to me that the house of Messrs. Moore and Co. have experienced many oppressions, having been deprived not only of four warehouses employed in their commercial business, without even one being left for that purpose, but that five different persons are billeted in their dwelling house, so that they have not sufficient room left for carrying on their business. On which account it becomes necessary that your Lordship should take measures for immediately freeing it of four of the five persons billeted therein; and subsequently, if the scanty supply of quarters should render it necessary, they will be burthened in due proportion, for which purpose it will be necessary that you make it manifest to me that there is no inhabitant without exception that has not some person billeted on him. God preserve you many years.

" Alicant, &c."

The Deputy Quarter-master-general of the British forces, Major Lang, after having inspected with the Plaintiff the state of his premises, testified his feelings upon the subject by the following note :—

" Quarter-master-general's Office,
" Sir, " Oct. 16, 1812.

" On returning to my house I found the enclosed billet. Being aware that you ought to be free from such visitors, I have not allowed it to be used; and I send it to you as a new proof of the conduct of the Junta.

" I am, Sir,
" Your very obedient servant,
(Signed) " R. LANG,
" Assistant Quarter-master-gen."

Finding, soon after his arrival at Alicant, that there were considerable disagreements between the British and Spanish authorities, the Plaintiff thought they were probably caused either by the want of knowledge and integrity on the part of the interpreters, and he therefore offered to act, and did act as interpreter on some occasions; and particularly on one occasion, on the 17th of October, when an arrangement respecting quarters was adjusted between the Governor of Alicant Brigadier-general Caamano, and Major Lang on the part of the Quarter-master-general of the English army, which if carried into effect would have allayed the discontents existing at Alicant.

About an hour after Major Lang, the Deputy Quarter-master-general, had left the Governor's, he called upon Plaintiff at his private house to state to him that he could not procure lodgings for an English wounded officer whom he was obliged to accommodate in his own room. The Plaintiff in consequence thereof agreed to give this wounded officer quarters in his private house, till the arrangement agreed upon should be carried into effect; but notwithstanding this act of kindness, this officer, Captain Pearson, of the 81st, behaved in so improper a manner that Plaintiff was obliged to make formal complaint thereof.

The arrangement for quarters was not carried into effect, and from what passed on the subject in the presence of the Plaintiff it became evident that considerable dissensions existed among the English officers themselves; in consequence Plaintiff determined to interfere no further, but take upon himself the exclusive management of his mercantile establishment, and to make the following offer to the Governor to facilitate an amicable settlement :—

" In order to facilitate the establishment of harmony on the subject of quarters, I propose that the Commissary-general of the English army should be lodged in my house in the Baranquet, placing at his disposal for this purpose the whole of the principal floor: viz. the dining-room and adjoining bed-room, anti-roam, and large drawing-room, large bed-room with adjoining dressing-room, and another smaller bed-room, with the use of the kitchen, and a room on the ground-floor

for servants; but the apartments given to a Mr. O'Shea in the first-floor, must first be opened, in order that the Portuguese officer commandant of artillery actually in possession of the dining-room, &c. &c. may go down to one of them. This offer is made, upon condition, that the part of Baron of Fenestrat's house, occupied by the said commissary as office, shall be given as quarters to Lord Frederick Bentinck brother to the Duke of Portland. That the other apartments under the portice of the Plaza del Mar, also occupied by said Commissary, should be given to an English officer of artillery, who lodged himself by force in a small house of Joseph Sanchiez in the Plaza de las Bareas, in front of the fountain No. ; and finally, that the present quarters of Lord Frederic Bentinck, shall be at the disposal of Captain Pearson of the 81st regiment of infantry, wounded in the expedition against Denia, and who is at present in my house, in case he or I should so desire it.

"THOMAS MOORE."

The governor was a distinguished officer of artillery, who had almost alone opposed the surrender of Badajos to the French, when Lord Wellington was so anxious that it should hold out for a few days after the retreat of Massena from Torres Vedras. He had lately arrived from Cadiz to take the command of Alicant, and to establish there, as he publicly declared, the new constitution; and he not only wished to conciliate the inhabitants of Alicant, but was cordially desirous to promote a good understanding with the English, and was in habits of confidential intercourse with the Defendant as well as with the Plaintiff. This governor, however, was recalled to Cadiz, when the command of the town devolved to the lieutenant-governor, and no steps were subsequently taken to allay the dissensions existing at Alicant, which continued whilst the army remained there, although Alicant was previously a commercial town eminently distinguished for its partiality to the English nation.

About the period of the governor's recal, Defendant's deportment to Plaintiff visibly altered, and at an interview in Defendant's room, Defendant instead of speaking of what was going forward as usual, turned the conversation to the exports and imports of Alicant in a marked manner; the Plaintiff dropped any further intercourse with him, though previously the Plaintiff had several conversations with the Defendant, who appeared to coincide in opinions with him; and the Plaintiff had not only done every thing to serve and accommodate Defendant, that one gentleman could expect from another, but had attempted to be of use to him in his official capacity, by acquainting him with the character of the country he was come to, and by informing him of the nature and causes of the dissensions existing at Alicant, citing among other instances (though at the risk of creating personal enemies to himself among the Spanish officers) the misrepresentations resorted to by Colonel Hermoso, chief of the Spanish staff, with respect to an order communicated on the part of General M'Kenzie to the governor Brigadier-general Casmano, and which Defendant told the Plaintiff he himself had sent to the latter. The Defendant also informed the Plaintiff, that to him all complaints of misconduct by the British army ought to be made, and to him the Plaintiff had in consequence, on the sixth of November, addressed a letter respecting Captain Pearson, with confident expectation of justice and protection.—The following is a copy of such letter.

"Plaza de Ramiro, 6th Nov. 1812.

"Sir,

"I find myself under the necessity of informing you, that after I had retired to bed last night, and about half an hour after the key of the street-door had been brought to my bed-side, which according to my orders is done every night when the clock strikes ten; I heard some person on the stairs ask for the key, upon which I requested Mr. James Budd who sleeps in the same room, to give it to the servant to open the door and bring it back again; and although he did so instantaneously, I heard the voice of Captain Pearson at my room door; upon which, I called out to enquire what was the matter; at the same moment I heard Captain Pearson enquiring for me, and Mr. Budd answering that I was in bed; and I had not time to say I could see no one, when Captain Pearson presented himself in my alcove, and after looking about and using insulting and menacing language, he departed to his room below, where it seems one of the two officers who had been with him remained all night, letting the other go out alone.

"I have to observe, that Captain Pearson is billeted in my house at my own desire, in consequence of the representation made to me by Major Lang, Deputy Quarter master General, that he had been severely wounded in the expedition against Denia, and that he could get no lodging for him; and that I proposed to give him a lodging in my house for a few days, under an impression that a satisfactory arrangement would immediately take place for the billeting of the British officers in Alicant, an outline of the plan for the purpose having been agreed to in my presence between the governor of this city and Major Lang. Under these circumstances, it is impossible for me to continue exposed to violence and insult on the part of Captain Pearson or any other persons he may think proper to have admitted into my house at any hour of the day or night. I shall, therefore, make a formal complaint respecting his conduct, to the constituted authorities; but I think it my duty as a British subject,

first to lay this statement before you for the information of the Commander-in-chief of his Majesty's land forces at Alicant.

"I am, most respectfully,

"Sir, your very obedient servant,

"T. MOORE."

"*To Colonel Adam, Adjutant-general of H. M.'s forces at Alicant.*"

On the 11th of November, the Plaintiff met the Defendant going down to the Mole, and shewed him a note he had received from Captain Pearson. The Defendant requested to have the note from Plaintiff, saying it was "too bad," and that he was going on board the Admiral. The Plaintiff at the same time told the Defendant that he had had some words with Lieutenant Roquefeuille, who wanted to deliver to the Plaintiff at his private house a letter directed to his mercantile firm at his mercantile house. Defendant took the matter up rather warmly, saying that it was he who had desired Lieutenant Roquefeuille to deliver that letter, which was from Major-general Clinton, in answer to one from Moore and Co. respecting certain bills on the Treasury taken from the Commissary. The Plaintiff said he had only refused to take it at his private house, because he had made a rule not to take any letters on business except at the counting house, and that the letter was directed to the firm at the counting house; the Plaintiff added at the same time that he supposed the Defendant's father might object to receive persons on business except at his chambers. Defendant parted from the Plaintiff on the Mole, and the Plaintiff being particularly anxious that his conduct on the delivery of General Clinton's letter by Lieutenant Roquefeuille should not be misrepresented to the Commander-in-chief, as exactly at the same time anonymous letters stating that the Commissary considered the Plaintiff mad appeared in the Diario, and insinuations to that effect were invidiously circulating, immediately went to his counting house, and addressed the following letter to him:—

"Alicant, Nov. 11, 1812.

"We have been honored with your letter of yesterday, which was delivered at our counting-house at about a quarter past three, after having been refused by Mr. T. Moore at his private house in Plaza de Ramiro at about a quarter past twelve; not, we can assure you, from any disrespect, but solely because it was addressed to us here, and because he had laid it down as a rule to take no letters on business except at the counting-house. We observe, that on returning to us the papers we had taken the liberty of enclosing to you, you say that you apprehend there will be no question arise in England as to the due discounting by the Lords Commissioners of his Majesty's Treasury of the bills drawn by Mr. Commissary-general Burgmann, and negotiated here by Mr. Daniel, the Deputy Commissary-general to the army serving under the command of Lieutenant-general Lord William Bentinck. Of this we were perfectly convinced, but we considered ourselves bound, and we are sure that we were in fact bound, in justice to our correspondents and to ourselves, to take notice of the irregularities we found in the bill delivered to us, upon which we shall decline troubling your Excellency any further. We have the honor to be, &c.

"*Major-general W. H. Clinton, &c. &c.*"

On the 13th of November, Plaintiff, not hearing any further from the Defendant on the subject of the note he had taken, wrote him the following letter:—

"Sir,

"I shall be much obliged to you to return to me by the bearer, or in any other way that may most meet your convenience, the note which Captain Pearson, of his Majesty's 81st regiment of foot sent to me on the day before yesterday, and which you took from me upon my handing it to you to inspect on your way to the Mole, on the afternoon of the same day.

"I have the honor to be,

"Sir, your most obedient servant,

(Signed) T. MOORE.

"Plaza de Ramiro, Nov. 13, 1812.

"*Colonel Adam, &c., &c,*

"*Plaza de Ramiro Alicant.*"

The Defendant returned the note under a blank cover, and the Plaintiff had no further communication whatever with the Defendant till the Defendant came to the Plaintiff's mercantile house with Lieutenant Roquefeuille, on the evening of the 16th of November.

On the 18th of November, the Plaintiff addressed a letter in his own name to the Commander-in-chief respecting Captain Pearson, and no notice being taken thereof, the Plaintiff began to doubt whether that or the last letter he had written in the name of his house had been delivered to the General. He therefore addressed another letter in his house's name, on the 24th of November, to the General, and desired a clerk to deliver it into the General's own hands; but he returned and said it had been taken by an officer in blue, with two epaulets, whom he believed to be the Admiral, and that he could not avoid giving it to him. The Plaintiff, thinking it more probable it was the Commissary, wrote another letter, on the 26th of November, as follows:—

"Alicant, Nov. 26, 1812.

"Sir,

"We yesterday instructed our clerk, Dn. Manuel J'avaloyes, to deliver a letter from us into your own hands, or at

least to bring us back the envelope, according to the custom of this country, as a sign that you had received it. He has neglected to fulfil our orders, and says that he delivered it to an officer with epaulets in a blue uniform. We therefore find ourselves under the absolute necessity of troubling you again with these lines, by Mr. James Budd, in order to have some proof in our hands that our letters have reached you.

"We have the honor to be, &c.

"P.S. It was on the 24th we addressed you and that he took our letter to you; that is to say, the day before yesterday.

"*Major-general W. H. Clinton, &c. &c.*

"*Head-quarters, Alicant.*"

In order to ensure the delivery of this letter to the General, the Plaintiff followed Mr. Budd, who was to deliver it, with Captain Bonner, to head-quarters. He there found that all the soldiers on guard were foreigners (Germans) who said, or gave to understand, that the General was not at home. Mr. Budd came down and said, that Captain D'Aquilar, whom he knew, had told him the General was not at home; upon which an English soldier of light cavalry, who was sitting down, apparently to see what was going forward, stepped up and stated that he General was at home; upon which the Plaintiff desired Mr. Budd to go up again and ask Captain D Aquilar when he could see the General, to present him the letter; but he (Mr. Budd answered, there was no use in his going up, as Captain D'Aquilar seemed resolved he should not present it, for that he told him it was useless, and to advise Plaintiff not to write any letters, as the General had other things to mind. Upon hearing this, the Plaintiff resolved upon going up himself with Mr. Budd and Captain Bonner; upon the top of the stairs they met a tall German Corporal or Sergeant, who after insinuating that there was no one to be seen, and perceiving that they were determined on seeing Captain D'Aquilar, conducted them through several back rooms into one where the Captain was sitting at a table, and three or four other persons, officers, &c., were in the room. Upon Plaintiff expressing his surprise at the message the Captain had sent him, and Plaintiff's determination to have the letter in his hand delivered to the General, Captain D'Aquilar looked at the others as if he did not know what to say; upon which, one said to him, "Say he is not at home," which he accordingly did; and upon the Plaintiff's inquiring when he would, he answered, the next day at twelve o'clock. The next day, exactly at twelve o'clock, the Plaintiff went thither with Mr. Budd and Captain Bonner, when they found an English guard, who assured them that the General was now really out of town, toward Murcia and Carthagena. The Plaintiff followed up his inquiries at head-quarters as to the General's return every day at twelve o'clock, and being informed on the 30th of November that the General was returned, sent Mr. Austin Moran with the letter, directing him to deliver it into his own hands; but he returned with the cover of the Plaintiff's letter, and on looking into the inside of it found written as follows:—

"I received from the bearer a letter addressed to Major-general W. H. Clinton, which I did not fail to deliver to him the instant I received it.

"HENRY FLOYD, A. D. C."

"Nov. 30, 1812."

But the Plaintiff heard nothing further about it.

The Plaintiff on all occasions had shewn the greatest zeal to forward the interest of the allied army, conceiving its success likely to procure for Spain an ameliorated condition, and to ensure the proper execution of the constitution already established, and which had been sworn to by all the Spanish authorities, civil and military, at Alicant, and proclaimed by Lord Wellington, on the 13th of August, the day after his entrance into Madrid after the battle of Salamanca, for which he received the thanks of the President of the Cortes in a public session at Cadiz, on the 28th of December, 1812.

The practice of quartering soldiers by force, without any legal authority, and compelling the inhabitants to make forced loans, appeared to him not to be likely to conduce towards the success of the allied army; but, on the contrary, by disgusting the inhabitants in general, to lessen the number of its adherents; as nothing could persuade the people that persons who pursued such measures could really be favourable to the liberties of Spain. Influenced by these considerations, the Plaintiff determined that he would neither submit to the one or the other, though he had offered to contribute amply to a voluntary loan if fairly negotiated by the proper constitutional authority, and not only advanced a sum of money to the Governor Caamano for the pay of the garrison, but undertook to supply the Spanish Military Hospital in advance during the month of December, the whole of which advance he has now lost; he also went to a considerable expense in making alterations in his mercantile house, to increase his means of accommodating English officers with quarters.

On the 14th of December, the Rev. Mr. King tendered to the Plaintiff at his mercantile house a paper purporting to be a billet for himself on Plaintiff's private house. The paper had no signature whatever, although it purported to have been granted by some Spanish authority and was printed.

The Plaintiff told Mr. King the paper he held in his hand was no authority, and that he could not think of obeying it. Mr. King

complained of the unpleasantness of remaining on board ship. Plaintiff told him he was very sorry for it, and would be very happy in endeavouring to accommodate him if he brought a letter of recommendation from England, or even from the Admiral in the bay, but that he was determined after the treatment he had received to maintain his right and yield to nothing but legal authority. Mr. King went away, but soon returned with Lieutenant Roquefeuille of the Adjutant-general's-office, who after nearly the same conversation had passed, said he would go with Mr. King and force his way into Plaintiff's house, which he did by threatening Plaintiff's servant during Plaintiff's absence from home, but as they had departed before Plaintiff arrived, he had the door secured again.

On the 16th of December, the Plaintiff being at his private house, and just finishing dinner, was informed that a party of officers and soldiers were forcing their way into his house, upon which, he wishing to avoid any personal altercations, retired through an adjoining warehouse, first leaving Major Lang, the Deputy Quarter-master-general's note open upon the table for the perusal of those who might break in, and went towards his counting-house, but on going out of the warehouse door, Plaintiff saw eight or ten English soldiers drawn up in front of his house in the square, (being the opposite side to that at which others were breaking in) and pointing their muskets into the lower ground floor windows where Plaintiff had masons then at work, and on turning the corner of the street in which the English head-quarters were, he was collared by two of them who had pursued him in the presence of two officers, one of whom the soldiers said was the General who angrily desired the soldiers to let the Plaintiff go, enquiring by whose orders they were acting in this manner; they answered by an English officer's. The General replied, that what he wanted to know was, what officer? but although they did not give him that information, he made no further inquiry. Plaintiff then proceeded towards his counting-house, whither the Defendant in company with Lieut. Roquefeuille followed him, after having searched for the Plaintiff at his private house, going even into the servant womens' room at the top of the house for that purpose, (as he told Mr. James Budd who remained behind when Plaintiff left it through the warehouse). The Plaintiff was in the cellar employed with several workmen, and in the midst of them the Defendant in an authoritative tone told the Plaintiff that they had forcibly entered his private house. Plaintiff said he had seen persons in red attempting to enter his house by force, but did not distinguish who they were. Defendant in a higher tone of voice repeated that he had forced open the house, and said that he understood that Plaintiff wrote or got things inserted in the Diario, but if Plaintiff said any thing of him he would give Plaintiff a horse-whipping, which he repeated, asking if any of the persons present understood English. Plaintiff seeing a person who did pointed him out to the Defendant, who again repeated what he had said.

Plaintiff at dusk went to his private house, the principal part of which he found occupied by four soldiers with fixed bayonets; neither Mr. King or any person on his behalf came to Plaintiff's house either on that day or the next, but the house still continued occupied by four soldiers with fixed bayonets, and Plaintiff was convinced that the whole business was conducted without the knowledge or approbation of the General.

On the 18th of December, Plaintiff finding that no one appeared at his house, resolved on endeavouring to communicate the business to the General, but despairing of doing it direct, from the circumstance that he had never received any answer to his former complaints, and from his unsuccessful attempts at a direct communication with the General on a former occasion, and Plaintiff's clerk being intimidated from conveying any communication from the Plaintiff into the General's own hands, (according to his repeated orders), he thought the best way to convey the business to the knowledge of the General, was to send a letter so worded that it would probably be submitted to him on account of its seeming liable to animadversion, he therefore sent the following in Spanish to head-quarters in the name of "Moore and Company," but instead of being received at head quarters, Plaintiff's messenger was directed to take it to the quarters of the Defendant, and it was there delivered to Defendant, Plaintiff being ignorant that the Defendant and Frederick Adam at head-quarters was the same person, but conceiving the latter to be a brother of the former, having heard he had one at Alicant.

"*Frederick Adam, &c. &c.*
Head-quarters, Alicant.

"Alicant, Dec, 18, 1812.

"Sir,

"Having seen in the Diario of the 6th of this month the following advertisement, 'Any person who arrests and conducts to the English head-quarters, deserters from the British army will receive a qualification of 12 hard dollars for each.'

'Head-quarters of Alicant, 4th Dec. 1812.
(Signed) 'FREDERICK ADAM,
'Dep. Adj.-Gen.'

"We take the liberty of informing you that there are four individuals in a house of the Plaza de Ramiro, which was inhabited by General Roche, and subsequently by Captain Pearson of the regiment, No. 81, wounded in the expedition to Denia who might perhaps answer that description, but

as in addition to their number they are armed, it would not probably be so easy for peaceable citizens to conduct them to head-quarters, and for this reason we send the bearer of this letter, whom we have informed of the means of apprehending them, for without this precaution, although the pile of buildings between the two powder magazines including church and all was surrounded, they might get away by channels unknown to,

"Sir,

"Your most obedient servant,

(Signed) "MOORE and Co.

"Baranquet-street."

N. B.—A P. S. was added, not copied in the copy-book of letters, but of the following purport:

"With respect to the reward offered, we will leave it to the known generosity of the English nation."

Plaintiff at his usual hour went to dine at his private house, whither the Defendant shortly after came, accompanied by Captain Hatzenbuller, Lieutenant Roquefeuille, and Sergeant Power, (who carried a large stick,) and the Rev. Mr. King. Whilst Mr. King remained on the outside, the four first went into Plaintiff's private room without any ceremony. On Plaintiff asking what business they had to come into his room, Defendant began to address Plaintiff in an authoritative tone, and producing the letter, asked whether Plaintiff had not written it; Plaintiff replied it was not signed in his name, and that Defendant knew that that was not the place to make enquiries about it, but at the Counting house, but that he would not deny that it was his hand-writing, and that he could explain it if called upon in a proper way. Defendant said it was a mauvaise plaisanterie, and getting between Plaintiff and the window, and turning about to Captain Hatzenbuller and Lieutenant Roquefeuille, told them that he would shew them that he was not afraid of the responsibility attaching to him, and forthwith ordered the Sergeant to thrash the Plaintiff, which the Sergeant accordingly did, by lifting up the stick and striking the Plaintiff three or four blows. Defendant then told the Sergeant that was sufficient, and then told Plaintiff that he understood he pretended to be mad, or was so. The Defendant then produced a billet in his own name, without any signature to it, exactly resembling that presented by Mr. King—Plaintiff said he would not quarter any person in that house except by force, and that he would expect in London to obtain redress for the assault committed upon him, adding that the billet was good for nothing. Defendant said he would take the lodgings himself, Mr. King not being a military man, and able to keep possession; on being asked by the Plaintiff whether Mr. King still held the billet, Defendant allowed he did,—Plaintiff had enquired how Defendant had procured a billet having quarters already, and observed that this fact alone was a proof it was not given by a competent authority or in a regular way. On some remarks being made by Captain ——— Plaintiff said to him that all Plaintiff expected of Captain ——— would be to tell the truth when called upon in England. Defendant then went up stairs with the rest, but soon returned with Mr. King, and demanded the key of the room in which Plaintiff slept, and which was adjoining to the apartment which he had forcibly occupied on the 16th, and on being told it would not be given voluntarily, but that he might take it by force, as he had done the rest, he snapped the key out of the hands of Mr. Jamess Budd. Defendant also accused the Plaintiff, in the presence of Mr. King, of having inserted an advertisement in the Diario, offering a reward for the discovery of the person who, in an English uniform, had insulted the principal priest of the parish, a particular friend of the Plaintiff's, openly in the street, when returning with the sacrament from a dying person; to which Plaintiff replied that he had done so, but that he could not believe that it was really an English officer who could have so conducted himself. Defendant then departed, and plaintiff had the billet glued upon the door, with words in Spanish under it, signifying "quartered by open force," and signed by the Plaintiff. The door on which it was glued was that of the garden, and fronted the street. He then sent an advertisement to the Diario, requesting that any inhabitant of Alicant, who knew whose flourish was affixed to a little printed paper "then glued on the outer door of his house, and in virtue of which, a party of English soldiers had broken into the outward and inward door of his house, taking possession of his principal apartments, would be so good as to communicate it through the channel of the said Diario." It is to be observed, that the Diario was the official paper of Alicant, in which all government advertisements were inserted.

The Plaintiff had the billet glued on the door, and sent the advertisement to the Diario, considering it the best means of drawing the attention of the English General to the transaction, and by this means gaining protection and redress. He knew it was useless to apply to the Spanish Lieut.-governor, who neither could or would interfere against an English officer. To obtain personal access to the English General he knew, from experience, not to be practicable, as all communication by letter passed through the hands of the Defendant; or at all events, as he had not received any answer to his former letters of complaint, which he had addressed respecting Captain Pearson to the quarter-master-general, and

to the adjutant-general, and to the commanders-in-chief: he had no reason to expect more attention to be paid to those he might write to on the present occasion. On the evening of the day on which this outrage was committed upon the Plaintiff, it was publicly stated in the most frequented shops in Alicant, that the Plaintiff had been violently cudgelled by the English, which could only have been told by the Defendant or those who accompanied him, as a matter of boast. Plaintiff not having mentioned the circumstance to any person.

Neither Defendant or Mr. King appeared in Plaintiff's house that night, although Defendant had taken possession of Plaintiff's bed-room; Plaintiff slept at his mercantile house on a mattress on the ground in a small room adjoining his counting house, and the next day went to Orito, a large isolated convent, which as well on account of its distance from other dwellings as of its privileges and immunities afforded an asylum where Plaintiff could reside without being exposed to unwelcome intrusion, and where he determined to stay and endeavour to carry on his business until he could get satisfaction for the past, and protection for the future, for which purpose he wrote to Mr. P. Strange, his former partner, requesting him to repair to Alicant from the country, where he had been since the beginning of November, and sent him a Power of Attorney, it being understood that he was to follow Plaintiff's orders. Plaintiff being fully convinced that he himself could not remain in Alicant with any regard to his personal safety. He not only feared from the Defendant a repetition of the same outrageous conduct, but he also feared and believed that others would think themselves justified and secure in conducting themselves in the same manner towards him, as they would look upon him as a person outlawed in consequence of his having been so ignominiously and severely chastised by an officer of such high rank in the British Army; and he had the more reason to apprehend it in consequence of his having previously and to the knowledge of the Defendant, rendered himself previously obnoxious to a great many persons by his endeavours to bring to light their nefarious practices in sowing dissensions and throwing the odium of arbitrary proceedings on the English, which had procured him threatening anonymous letters, besides several attacks in the Diario, representing him as mad—some making use of the name of the Commissary General, and others signed by the Secretay of General Roche. The brother-in-law and dependants of General Roche had at different times attempted to intimidate the Plaintiff by menacing language and threats of personal injury in the entrance of his mercantile house, and in the public streets. General Roche and his relations were highly exasperated with Plaintiff in consequence of Plaintiff's having exposed in the Diario the misconduct of General Roche, whilst in possession of Plaintiff's private house, and complainrd thereof in presence of Defendant to the Spanish Governor, before whom legal proceedings were commenced by the Plaintiff against Gen. Roche, he being a Spanish Officer. The Plaintiff had hitherto despised these threats, not thinking they would dare to put them into execution; but he now considered the conduct of the Defendant a direct call upon them to follow the example, and calculated to make Plaintiff odious, not only to the English to whom his conduct was misrepresented, but to the motley crew of Italians, Germans, Poles, &c. who with Spaniards of all descriptions composed the Allied Army, some of whom might think it meritorious to assassinate the Plaintiff in a province in whose capital (Valencia) the resident French merchants amounting to about 150 had been murdered in cold blood, and the assassins or their instigators might reasonably be supposed to have sought refuge at Alicant, it being at that period the only place of safety unoccupied by the enemy who was within a short distance, and reported to be advancing in force. Plaintiff was confident that the steps he had taken and the publicity of his having been obliged to leave Alicant, would have brought on an investigation into the nature of the transactions at his private house, of which he still believed the General to be ignorant; but learning that the Defendant had gone to sleep at his house, and put his name on the door next to the billet which had been glued on, stating them to be his quarters as Adjutant-general, though he kept his former quarters—and that all manner of injurious reports were circulating at Alicant with regard to him; sent an advertisement to the Diario on the 24th December to the following effect:

"That the Plaintiff having retired to the convent of Orito near Montforte, not chusing to continue exposed in his own house to personal insults, whilst there existed no authority that could or would restrain them, nor a free press to appeal to at Alicant, the public was thereby informed that all just demands upon the house would be paid on the evening of the day subsequent to the one on which they were made, Sundays excepted."

This advertisement Mr. Strange refused to put his name to according to Plaintiff's direction, alleging that it would commit him with the English and Spanish authorities. It was necessary to give a public notice of the cause of Plaintiff's quitting Alicant, and of the place of his retreat, although he had left it with a regular passport from the Lieutenant-governor, arbitrary proceedings were commenced against his property on the very day that he left Alicant, under the

ples of his non-appearance to summonses which were never delivered, and the reason for desiring Mr. Strange to sign the advertisement was for fear the printer might refuse to put it in unless some person resident in Alicant would put his name to it, in order to cover his responsibility as printer, in conformity to the law establishing the liberty of the press. But Mr. Strange's name was not to appear in the Diario.

During the delay (occasioned by Mr. Strange's refusal) in the insertion of this advertisement in the Diario, Plaintiff received a letter from Mr. Athy, acting English Consul at Alicant, giving the Plaintiff an account of the reports in circulation with respect to him, viz. That he was out of his senses, &c. and at the same time complaining that Plaintiff had diminished his profits by taking the regular bills of the officers of the navy in the government offices at the same exchange as the Commissary-general of the army negotiated his drafts on the Treasury. Plaintiff inclosed this letter to the Defendant expecting that he would immediately take steps to undo the injury he had done him. Plaintiff also addressed a few lines to the Defendant in which he appealed to his feelings as a man, to have a communication made to Plaintiff's mother of the truth, as he stated she was very old and infirm, and might fall a victim to false reports. He also intimated to Defendant that Sir James Macintosh, with whom Defendant had professed himself acquainted, was a gentleman through whom such information might be afforded to his mother. Plaintiff made this request in consequence of his letters having been intercepted and kept back, most irregularly transmitted or delayed for a most unreasonable time.

On the 28th of December as Plaintiff was walking outside the convent on the road, he was accosted by a soldier on horseback, with a letter addressed from Mr. Chiva (the minister of finance) to Moore and Co. upon the subject of the military hospital not being regularly supplied in consequence of Plaintiff's absence, which Plaintiff refused to take, telling him to deliver it at the counting-house. Upon which the soldier by the orders as he subsequently said, of a little man who was standing at a distance, and making signs to him, drew his sabre and insisted upon the Plaintiff's receiving it, which the Plaintiff absolutely refused to do, he being in the presence of several of the friars, and within a few yards of the convent into which he immediately retired. Plaintiff was convinced as well from this as from the information received from his house at Alicant, stating, among other violent proceedings going on there, that a great part of (the Hope, Captain Banners) a cargo of fish which he had landed into his warehouse (for account of Messrs. James Hunter and Co. of Greenock) had been embargoed and seized upon, under different pretexts that he could not carry on his business in this manner; for not only his clerks and the persons employed in his warehouses were intimidated from following his orders, but the German house with whom he had deposited his cash, making them his bankers, had been obliged to pay a check of the Plaintiff's to a different person than the one to whom alone it was made payable, notwithstanding their opposition, without any further preliminary than an inquiry whether they possessed the amount thereof in cash belonging to the Plaintiff; and they stated that they were afraid of being again similarly circumstanced, unless the Plaintiff immediately retired his cash out of their possession. The Plaintiff having, moreover, received a letter from Mr. P. Strange, expressive of his desire to retire from Spain; and it being now evident, in consequence of the letter addressed by the Plaintiff to the Defendant, and which had been duly delivered by Mr. James Budd at his quarters to Sergeant Power remaining unanswered, that the Defendant would not come forward to make the Plaintiff any reparation, the Plaintiff sent an advertisement to the Diario, stating, that the house of Moore and Co. would suspend its business on the last day of the year. After this, the English Commissary, who had entered into a contract with the Plaintiff, seized upon various parcels of wine belonging to the Plaintiff by the Spanish Lieutenant-governor's orders, although the Lieutenant-governor told the Commissary that he had no authority for granting such an order, and for this wine the Commissary has not paid to this day.—Several persons besides the Commissary, and following his example, laid hands upon Plaintiff's property, for which they have not paid; and it is therefore apparent, that to the Defendant's violent outrage is to be attributed the loss of Plaintiff's mercantile establishment.

On the 17th March, finding that all hopes of redress were vanishing, Plaintiff determined to go to his house at Alicant, the army having then removed from Alicant, under the command of Sir John Murray, who was stated to have lately arrived from England, and to have established a strict discipline, issuing special orders on the subject of quarters, and to call on the Defendant for an explanation of his conduct before Plaintiff departed for England; but Plaintiff found that Defendant was no longer there, having been sent on the coast in his Majesty's ship Fame, and that the sergeant who had beaten Plaintiff, was in the possession of the apartments which Defendant had taken; upon which Plaintiff went to sleep at the house of his mother's housekeeper; and there, under the influence of certain delusions, at the moment thinking all redress hopeless, cut his throat.

The Plaintiff having been isolated from all

protection as a British subject by the conduct of the Defendant, the Alcalde, under the pretence that the Plaintiff was deranged, thought himself justified in taking possession of all Plaintiff's property, and placed a guard of Capuchin Friars on Plaintiff's person. The Plaintiff, anxious to obtain some English protection, went as soon as he was able by night with his servant to his private house, where he was obliged to get a bed brought to the lower apartments, Sergeant Power continuing in possession of the principal ones, for Defendant, whose servants were in possession of the kitchen, &c. At Plaintiff's request, Sergeant Power came to see him, when Plaintiff expressed his ardent desire to see some English officer; Sergeant Power informed Plaintiff that Defendant was hourly expected to arrive in the Fame, and that he would inform him of his wish. Defendant did in consequence, a day or two after, come into Plaintiff's room, but though he saw the situation he was in, and that some Capuchin Friars had been stationed as guards upon him in the adjoining room, he took no steps to be of service to Plaintiff, but left the house, and next day withdrew his effects to the Malta, and Plaintiff would have remained totally unprotected (his servants being restrained from obeying his orders by the Alcalde), if he had not prevailed on Sergeant Power to beg of Admiral Hallowell to come and see him, which the sergeant promised he would do the moment the Admiral returned from Castalla. In consequence the Admiral, with Captain Inglefield, of the Malta, paid a visit to Plaintiff at his house, at his request, which was sufficient to put an end to the interference of the Alcalde, and of four medical men whom the Alcalde had sent to visit Plaintiff against his will, Plaintiff desiring to be solely attended by Mr. Sankie.

Soon after, Lieut. A. Judge presented himself with a billet, at the same time politely requesting Plaintiff would accommodate him with a room, which the Plaintiff very willingly did, desiring the Friars to withdraw and make way for him, which they no longer hesitated to do, saying, they had hitherto been obliged to remain there by orders of the Alcalde. On being informed, about a month afterwards, by Lieut. A. Judge, who was then the acting quarter-master-general, that Defendant was severely wounded at Castalla, and bringing into town in a blanket, and that he was not able to procure quarters for him, the man at the Town house only offering him little printed papers in blank to fill up himself, Plaintiff made an offer to give Defendant, on certain conditions, a lodging through the medium of Admiral Hallowell, as his particular friend, on the supposition that Defendant would at length make every possible atonement by doing every thing in his power to co-operate with Plaintiff in any manner he might think likely to undo the bad effects of Defendant's conduct; but instead of making any atonement, he only added a new insult, by sending his servants (Frenchmen and Italians, although Plaintiff had stipulated that only an English servant should attend upon Defendant) and luggage to Plaintiff's house, whilst he himself, being well enough to ride into Alicant and to the Mole, went on board the Malta.

Plaintiff made a last attempt to bring Defendant to a due sense of his conduct by writing a letter to Admiral Hallowell on the 20th April, the former being then on board his ship), in which he distinctly stated the injury received from Defendant. To this letter Plaintiff referred Defendant in a few lines sent him on board the Malta the 22d April, through the medium of the acting English Consul. The Plaintiff received an answer from the Admiral's secretary, dated the 20th April, merely offering him a passage in a transport for Gibraltar at a few hours' notice, and one from Defendant, dated the 22d April, which he found upon the table of his drawing-room, it having been laid there by a person in the dress of a midshipman. Defendant's letter did not take any notice of the letter addressed by the Plaintiff to Admiral Hallowell. The Plaintiff then, finding it impossible to obtain any redress at Alicant, embarked on the 1st May on board a Spanish frigate for Cadiz.

many years, who will state that in their judgment the plaintiff ought not in prudence to have remained in Alicant, and that although he could have remained there, he could not under the circumstances have carried on the business of the house. The cases of Goodtitle v. Braham 4 Term Reports, 497; Thornton v. Royal Exchange Assurance Company, Peake's Nisi Prius Cases 25; Chamard v. Angerstein, ibid. 43, prove that this evidence is admissible.

OBSERVATIONS.

It would be difficult to conceive a more aggravated case than the present. The Defendant was not in the Quarter-master-general's department. He had not any pretence to interfere as to quarters. He had no authority for acting as he did, for if he had he would have put a justification on the record to the court, *de bonis asportatis*. He was on friendly terms with the Plaintiff; the Plaintiff having on several occasions paid the Defendant particular attention in offering him apartments in his house, sending him newspapers, and had on several occasions confidential communications with him, and yet without enquiry or expostulation, he forces his wey into Plaintiff's house; then comes, insults, and threatens him in the midst of his workmen, and afterwards when the Plaintiff writes a letter to head-quarters, which it was defendant's duty to lay before the General, he of his own authority comes to plaintiff's house, attended by two officers and a sergeant, and Mr. King chaplain to the forces, forces his way into plaintiff's private room, and then in the presence of so many witnesses collected entirely for the purpose, has the plaintiff chastised, not by himself in consequence of passion, but in the most deliberate manner, and the most ignominious to the plaintiff, by the hands of the sergeant, as far as it lay in defendant's power degrading the plaintiff from the rank of a gentleman. The cowardice and malice of defendant in the transaction have never been surpassed; he came to attack an individual attended by three armed men; he excluded every person from the room, except his own attendants, thinking that by that means the possibility of legal evidence of his tyrannical conduct was prevented, and by directing the sergeant to assault the plaintiff, he prevented plaintiff having recourse for redress to those laws falsely called the laws of honour; by conducting the brutal assault in such a deliberate manner, he gave it the appearance of the act of a judge inflicting punishment on a culprit, and the inhabitants of Alicant must have considered plaintiff guilty of some heinous crime, at least of attachment to the French, and in a period of political phrenzy, the consequence to the plaintiff must of course be, that he would be marked as a public enemy, and on the advance of the French, or any other cause that would have irritated or excited the inhabitants, the plaintiff would doubtless have been considered as a propitiatory sacrifice to the injuries of the country, considering that by Plaintiff and others of the same description that country was betrayed.

Defendant while in Alicant never made any attempt to afford the plaintiff redress, but had he made a public written acknowledgment, that the outrage committed on the plaintiff was illegal, and entirely uncalled for by any act of the plaintiff, such acknowledgment would have enabled the plaintiff to have resumed his establishment and the loss caused by the defendant's conduct would have been much lessened. The expressions used by the defendant immediately after the battery may it is presumed be insisted upon in aggravation of damage, that he understood the plaintiff was mad or pretended to be so, see Bracegirdle, v. Oxford, 2 Maule and Selwood, 77. (In the case of Moslyn, v. Fabrigas, Cowper, 161, 3000l. damages were given, although no disgraceful punishment inflicted and only six days imprisonment. In Russels v. Vereist, 2 W. Blackst. reports 1055, 4000l. damages were given; there was two months imprisonment, but no personal violence exercised towards the plaintiff. In Sutherland v. Murray, 1 term reports 538, which was an action against the defendant Governor of Minorca, by the plaintiff who was Judge of the Vice Admiralty Court, for maliciously, &c. suspending him from his office, the jury gave 5000l. In all these cases except the last, no special damage was laid or proved, in all of them no ignominious punishment was inflicted upon the parties, and money at the time of those trials was at least double its present value, and the plaintiff in this case occupied a more respectable situation in life than either of the first named plaintiffs.

As the defendant has pleaded the general issue, he is now excluded from giving in evidence any thing in the nature of a justification, and therefore cannot produce evidence to prove that he acted under the orders of the English General or the Spanish authorities. See Watson v. Christie, 2 Bos. and Pul. 224. Should it be attempted to be insinuated on the behalf of the defendant, that the plaintiff was hostile to the cause of the allies; the contrary can be proved by General Campbell, Lord Frederick Bentinck, Mr. Strange, &c.

Should it be insinuated that the plaintiff caused his loss by his own incapacity as a merchant, Sir T. Baring, Mr. A. Baring, &c. will prove that previous to his departure from England, in the year 1812, he was most competent, and since his return to England has been most competent to the proper and wise management of the most extensive mercantile establishment.

Should any attempts to impute insanity be made, it must be founded on mere hearsay evidence of General Roche and Mr. O'Shea, who had in fact pillaged the property of plaintiff's mother, and who had become his bitter enemies, in consequence of his having resisted and detected their malpractices, and who did every thing in their power to spread a report of his being insane in order to prevent persons paying that attention to Plaintiff's observations on the conduct of General Roche and his dependants, which would have otherwise been paid to them. Should the fact of Plaintiff having cut his throat be insisted upon, as that was entirely the consequence of the misery caused to the Plaintiff by the outrageous and disgraceful battery inflicted by the orders of the defendant. It is conceived that such fact can only tend to aggravate the damages. Admiral Hallowell who saw the plaintiff after the battery will prove that he considered the plaintiff perfectly sane, and considered him as a very sensible man.

It is hoped that the evidence stated will be sufficient to prove to the jury that the suspending the business of the plaintiff's house, and the damages consequently thereon, were the natural results of the defendant's illegal and unjustifiable assault.

Should it be argued that plaintiff ought to have made a direct application to the General then commanding, it may be insisted that the advertisements, gluing the billet on the door, &c. were sufficient calls for the General's interference.

It appears to be a strong circumstance to shew that the plaintiff could not remain with safety, that although several of his dependants heard blows given in a room in which plaintiff was alone with four armed men, not one of these dependants dared to enter. The fact that defendant occupied plaintiff's house after the assault, is conclusive as to the fact that it was prudent for plaintiff to leave the town, which may be given in evidence under the count *de bonis asportatis*. Should it be argued on the opposite side that it is ridiculous to suppose that a mercantile house of the high character and respectability of plaintiff should be destroyed by an assault on the proprietor, it may be answered that every thing depends on the situation of the place, the character of the times, and the manner in which the assault was committed.

Were a man to assault another, and the consequence should be the loss of an arm, it would not be any palliation that the plaintiff in such a case was a peculiarly sickly man, and that the same violence exercised towards a healthy man would not have caused the same injury. The only question would be did defendant cause plaintiff to lose his arm? if he did, he must bear all the consequences of his tortious act. So in this case, although the assault of the plaintiff in another situation of Alicant might not have produced such injurious consequences to plaintiff, yet if, from the peculiar situation of Alicant, it did produce such consequences, the defendant must answer for all the consequences of his tortious act. In fact, unless in a town situated as Alicant was such an assault would not have taken place.

Should it be proved to the satisfaction of the jury, that plaintiff was justified in leaving the town, it will not be difficult to persuade them, that the business could not be carried on, as not one of them would have honoured a draft of plaintiff's house, or executed an order after hearing such a fact, until it was most fully and satisfactorily explained.

Should it be objected on behalf of the defendant, that the damages are too remote, it may be answered, that the objection, if available, is on the record, and therefore the plaintiff ought to be let into the evidence.—Secondly, that the special damages are well assigned by stating, that the loss happened by reason of the wrong complained of; the rest is matter of evidence, and peculiarly the province of the jury.—See Sutton v. Johnstone, 1 Term Reports, 508.

After the most attentive research, it has been found impossible to discover an instance in which the question, whether the damages laid as the consequence of a trespass, were so or not? has been taken from the jury by the judge who presided. In the case of Boyce v. Bayliffe, 1 Campb. 58, Lord Ellenborough allowed the evidence to go to the jury, although with strong remarks. In that case, Lord Ellenborough does say, that it is necessary that the special damage should be closely connected with the trespass; but it is presumed that the only question is, Whether the consequential damages were wholly caused by the trespass? Had the defendant closely imprisoned the plaintiff for six months, the consequence of which had been the loss of plaintiff's business, it could scarcely be contended, that the defendant would not be liable for such consequences; and if the jury should be of opinion, that the loss of plaintiff's business was equally caused by the beating, why should not the defendant be also liable? It is merely a question for the jury, whether the plaintiff suffered the injuries complained of as consequential damages through the act of the defendant; and that it is merely a question for the jury, the following cases, it is contended, will amply prove:—Whatever may be recovered in an action on the case, if there had been no trespass, may, and in fact must, be recovered as consequential damages, if a trespass has taken place. See Fetter v. Beale, 1 Salk. 10.—That it is not necessary that the trespass should instantly produce the consequence, the case of Scott v. Shepherd, 3 Wilson, 403, 2 Black. 892, is a strong instance; for it is quite clear, that

if an action of trespass was not the proper action, an action on the case might have been maintained; and yet, in this case, the squib went through several hands before the plaintiff was injured.—An action on the case will lie, if defendant, having a right to enter into the yard of another, fixes a spout there, by which are discharged great quantities of water on plaintiff's land, and which rot the walls. Reynolds v. Clarke, 2 Lord Raym. 1399, and Str. 634; 8 Mod. 272.—If a man be falsely imprisoned, and thereby forfeit his recognizance, he shall have an action on the case for it. Bourdew v. Alloway, 11 Mod. 180.—An action on the case will lie for calling a woman a whore, by which she lost her customers. Brown v. Gibbons, 2 Lord Raym. 831.—An action on the case will lie for an injury done to plaintiff's colliery by what defendant had done in his own colliery, and in his own soil. Haward v. Bankes, 2 Burr, 1113.—An action lies against a surgeon for unskilful treatment, whereby plaintiff lost the use of his leg. Slater v. Baker, 2 Wills. 359.—An action lies against a person for not taking away tithes, whereby not only the ground covered by the tithes, were lost to plaintiff, but the grass of the whole close. Shapcott v. Mugford, 1 Lord Raym. 187.—An action on the case will lay against a person for so negligently keeping his fire in his field that his neighbour's clothes in an adjoining close were burnt. Turberville v. Harrop, 1 Lord Raym. 264; Skinner, 681; Carth. 425; 1 Salk. 13; 1 Cowp. 32.—If A. send his servant to pay the penalty of a bond, and the servant's horse is pricked by a smith in shoeing him, whereby he cannot proceed on his journey, the master shall have an action for the injury in not paying the money, and the servant for the injury done to the horse. Everard v. Hopkins, 2 Buls. 332; 1 Rolls Reports, 124.—If a constable place a dragoon improperly, and in consequence liquor is let about the cellar, the constable is liable for the liquor spilt, and all the consequences of his illegal act. Parkhurst v. Foster, 1 Lord Raym. 480.

In trespass, the plaintiff counted that the defendant menaced him, by which his business in this country and in the county of D. was not done, and shewed how, viz. in collecting rents, &c. repairing houses, and held good. Viner's Abridgement, title—Trespass, Assault, and Battery, c. 4, pl. 2, page 431.

So if one slander my title, whereby I am wrongfully disturbed in my possessions, though I have a remedy against the trespassors, yet I may have an action against him who caused the disturbance. So if a man tells the bailiff of a manor that a sheep belonging to plaintiff is a waif, upon which the bailiff seizes, an action lies against the person so telling, although an action may also be maintained against the bailiff. Newman v. Zackey Aleyn, 3.

An action on the case lies against one that shall by threats fright away plaintiff's tenants at will. Roll's Abridgment, 108.

An action lies against the master of a vessel for firing a cannon at negroes, and thereby preventing them trading with the plaintiff. Tarleton v. M'Gawley, Peake's N. P. Cases, 205.—This is a much stronger case than the present, inasmuch as in that case the plaintiff recovered damages for a loss occasioned by an injury done to third persons; in this case, the plaintiff seeks recompense for losses occasioned by an outrage committed on himself. The expressions used by Erskine in that case apply strongly to the present—"So long since as the days of Bracton it was held, that to constitute a duress in law, it must not be *suspicio cujustibet vani et meticulosi hominis, sed talis qui possit cadere in virum constantem talis enim debet esse metus, qui in se continet vitæ periculum aut corporis cruciatum*: but in this case, the plaintiff's loss was not occasioned by the vain fears of the negroes, or even the fear of a battery being committed on them, but a fear arising from the danger of life itself."—So, in this case, the plaintiff's loss did not arise from any vain fears, and if not from a fear arising from the danger of life itself, at least arose from a well-grounded fear of battery, which, from dear-bought experience, he well knew the defendant would not hesitate to inflict in the most severe and ignominious manner.

A husband brought an action against a person for inducing his wife to continue absent from him, whereby he lost her society, and great advantages which he might and would have derived from a great property which came to her sole and separate use. Plaintiff recovered 3,000*l.* damages, which were manifestly given for the losses of the money, although it is by no means certain that he would have gained any advantage from it, had the defendant not interfered; but the declaration was held good on motion in arrest of judgment. Windsmore v. Greenbanks, Willes, 577.

If plaintiff brings an action of assault and false imprisonment, and lays a gaol fever which she caught as consequential damages, she may recover damages for such injury. Pettit v. Adlington, Peake's N. P. Cases, 62.

An action will lie for maliciously suing out a commission of bankruptcy, and the plaintiff may recover damages to the whole amount of any injury he may have sustained in consequence of the loss of credit occasioned by the malicious act of the defendant. Chapman v. Pickersgill, 2 Wilson, 145.

Trespass for assaulting plaintiff's servant, per quod he was prevented collecting the

tolls of a fair, held good. Dent v. Oliver, Cro. Jas. 123.

A father may bring an action of trespass for breaking and entering his house, and lay the debauching his daughter as special damages. Bennett v. Allcott, 2 Term Reports, 196.

An action may be maintained for disturbing wild fowl in a decoy; the defendant was on his own land, and no malice supported or proved. Carrington v. Taylor, 11 East, 571.

In the case of Moore v. Meaghan, 1 Taun. 39, it was held by all the judges, that an action lay for defamation when the special damages laid was the loss of entertainment by friends, although without such special damage no action would have lain.

If a man, time out of mind, hath a leet and other court, &c. over a manor and town; if a stranger holds a court in the town, and distrain the tenants, and them by many distresses does impoverish, per quod they cannot pay their rent, an action on the case lies against him. 2 Vin Abridgement, pa. 9. (N.C.) Pla. 7.

In the case of Lord Lonsdale v. Littledale, 2 H. B. 270 special damage is assigned for removing defendant's goods, and that in and by reason of such removal, were part thereof, &c. purloined and lost; to this no objection was ever made, although the cause went into the house of lords.

The only case that appears to in the least shake the doctrine contended for, is Boyce v. Bayliffe, 1 Campbell, 58. In which case Lord Ellenborough held, that in an action for false imprisonment on board a ship, the plaintiff cannot recover as special damage the expenses incurred in leaving the ship and taking his passage on board another, unless the injury continue down to the moment of his leaving the first ship, and he must then act with a view to the preservation of his life, or at least a reasonable regard to his own safety. Supposing this case to be law, and with due deference it is submitted, that it cannot be supported to the extent of the expressions, yet plaintiff in this case comes within it, for the injury continued at the time of his leaving Alicant, and he acted from at least a reasonable regard for his own safety, at all events that is a question for the jury. It has not been possible to discover any book in which the case of the lieutenant alluded to by Lord Ellenborough is mentioned; but if it was proved to the satisfaction of a jury that he lost his lieutenancy by the false imprisonment, it would be difficult to contend that he ought not to recover such loss.

Should it be objected, that the plaintiff has not set out in his declaration, with sufficient precision, what customers and business he lost; it may be answered, that the business of a general merchant is of such a nature, that it is impossible to state it more accurately, which brings the case precisely within, Hartley v. Herring, 8 Term Reports, 130.

Many more cases might be cited to shew, that defendants are held liable to very remote consequences of legal, much more of illegal acts; whoever does a tortious act, is answerable in trespass for all the consequences: and per Nares In., Rafaels v. Vereist, 2 Blackst Reports, 987. Every thing that can be done, should be done to remedy an injury received; and for that purpose, Boni judicis est ampliare jurisdictionem suam.

Should the judge on the trial of the cause, refuse to allow the Plaintiff's counsel to go into evidence as to the consequential damages, it is the most earnest wish of the plaintiff and his friends, that a Bill of Exceptions should be tendered.*

FURTHER PROOFS.

This witness, who is a merchant in Alicant, in partnership with his brother, will prove that at the period of the assault Alicant was occupied by the allied troops under the command of a British General That after the assault he is of opinion the plaintiff would have been exposed to personal danger. He has no doubt but that others, after what had occurred, would consider plaintiff as a person who might be treated in the same manner by

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* Although this may be the courteous legal mode of statement, my instructions were much more positive, as will be seen by the following letter:

Messrs. Brundrett, Lowten, and Spinks.

"Gentlemen,

"Having reflected upon the results of the consultation at Mr. Brougham's which was consumed in discussing whether I would be able to prove the assault, though I said that should be taken for granted, and at Sergeant Best's, which passed in supposing the judge might prevent the question of special or consequential damages going to the jury, without there being as far as I can learn any good reason for supposing it, I must beg leave to state that in order to prevent the approaching consultation leading to no better results, it must be understood peremptorily that if the judge should attempt to prevent my counsel from going into the evidence on the consequential damage, they will present a bill of exceptions. Any thing else will not answer my purposes, and if they will not do it I will get some one who will, for upon no other conditions will I put my cause into their hands,

"I have the honour to be, very respectfully,

"Gentlemen,

"Your most obedient servant,

(Signed) "THOS. MOORE.

"63, Montague-square,

Dec. 7, 1815.

any other person, and that several would not have hesitated to have acted in the same manner. That he considered it was therefore necessary for plaintiff to leave the town, from a proper regard to his own safety; and that no prudent and wise man would, under such circumstances, have remained in the town. That in plaintiff's absence he considers it would have been impossible for the business of Moore and Co. to have been carried on with any advantage; nor does he think that the bills of the house could have been negotiated, but under insuperable difficulties. He is also of opinion, that even if the plaintiff had been able to have remained in Alicant, he could not have carried on the business with any success, unless the transaction had been explained to the satisfaction of the people of Alicant and his correspondents. That witness would not have remained in Alicant under similar circumstances, and is of opinion if it had not been for what had occurred between defendant and plaintiff the business of the house of Moore and Co., which was of the highest respectability, would have continued to have been carried on as before.—Call PHILIP PIQUERES, of Alicant, merchant.

That after the assault was committed on plaintiff, defendant and his party went up stairs, where the four soldiers were in possession of plaintiff's drawing room and adjoining bed room. That within this room was a smaller one, in which plaintiff slept, the door of which was locked, the key of which the defendant sent Sergeant Power to demand from plaintiff. That plaintiff called witness and gave him the key to go and see what they wanted, but before he could get up stairs defendant and his party returned into the room where the assault was committed, and defendant demanded the key, saying, if plaintiff did not give up the room that was locked, he (defendant) would take the one plaintiff was then in; that plaintiff replied, I will give you nothing of my own accord, but Mr. Budd has the key in his hand, and as you have taken the rest by force, you may take that; upon which the defendant immediately snatched the key from witness, and went up stairs.—Call Mr. JAMES BUDD.

To prove that the profits arising to the plaintiff from his trade was upon an average 5,000l. per annum, and who will state the grounds for his statement if necessary—Call Mr. PATRICK STRANGE.

This witness is a surgeon, and will prove that he attended plaintiff after the unfortunate circumstance detailed in the brief. That plaintiff soon got well. That he (witness) lived in Alicant from June, 1812, till some time in the next year, and is of opinion, from the state of Alicant, that after the assault committed by defendant, that plaintiff could not as a prudent man remain there. —Call WILLIAM SANKEY.

IN THE KING'S BENCH.
Between
Thomas Moore, Plaintiff; and
Frederic Adam, Esq., Defendant.

You are hereby required to produce to the court and jury, on the trial of this cause, all letters and notes written by the Plaintiff to the Defendant during the years 1812 and 1813; particularly a letter addressed to Defendant, as Adjutant general, complaining of the conduct of Captain Pearson, of the 81st regiment; a note addressed to Defendant requesting that he would return a note from Captain Pearson to Plaintiff, which he handed to Defendant, at his request, when he was going on board the Malta; also a letter from Plaintiff to Defendant from the Convent of Orito, inclosing one to Plaintiff from the acting English Consul, Bernard Attry, Esq., dated 28th December, 1812.

Yours, &c
BRUNDRETT, LOWTEN, and SPINKS.
Plaintiff's Attorneys.

Dated Dec. 1, 1815.

To Frederic Adam, Esq., the above named Defendant, and to Messrs. Browne, his Attorneys.

IN THE KING'S BENCH.
Between
Thomas Moore, Plaintiff; and
Frederic Adam, Esq., Defendant.

You are hereby required to produce to the court and jury, on the trial of this cause, a certain letter written by the Plaintiff in the month of October, in the year 1812, and addressed by him to the Defendant, enclosing a long letter in the Spanish language from the Countess of Bureta, at Cadiz, and addressed by her to the Plaintiff in London; also another letter, written by the Plaintiff in the said month of October, 1812, and addressed by him to the Defendant, accompanying a translation in the French language of the preliminary discourse to the Spanish Constitution, and the Inquisition unmasked, in the Spanish language; also another letter written by the Plaintiff in the month of November, in the year 1812, and addressed by him to the Defendant requesting the last-mentioned work to be returned; and also a statement of the conduct of part of General Roche's division in a convent of nuns, at Santa Fas, in the hand-writing of the principal parish priest of St. Mary's, in Alicant, delivered by the Plaintiff to the Defendant at his particular desire.

Yours, &c.
BRUNDRETT, LOWTEN, and SPINKS.
Plaintiff's Attorneys.

Dated this 13th day of December, 1815.

To Frederic Adam, Esq., the above-named Defendant, or Messrs. Browne, his Attorneys.

The following Letter was delivered to Mr. Sergeant Best, and returned with his Brief.

MESSRS. BRUNDRETT, LOWTEN, AND SPINKS.

" Gentlemen,

" Not being well able to attend the consultation this evening I request you will read the following observations to my counsel:—

" My object is not to obtain damages as a compensation for the assault nor is it to obtain large damages merely as a compensation for the injury done to me in consequence of it. My object is not to prove to the people of Alicant that I was ill-treated, nor even to prove to them and to the world at large that I did not deserve that treatment. My object is to prove that in retiring from Alicant as I did, I acted with judgment and propriety.

In retiring from Alicant I eventually abandoned the interests of my correspondents in both hemispheres who might have consigned property to a very large amount to my care, confiding on their knowledge of my mercantile establishment for half a century, and on the security that the presence of an English army might be supposed to afford. It is therefore necessary to shew that by my conduct I consulted their interests as well as mine, and this can only be satisfactorily done by the verdict of a British jury approving thereof by awarding special damages. In the truth of this proposition, Mr. Alexander Baring agreed with me a few evenings ago without entering into the particulars of the present case. I shall therefore endeavour to answer the only objections I heard at the consultations.

" Mr. Sergeant Best agreed my case would be made out if any threats were proved subsequent to the assault. I must beg leave to believe he has not weighed well all the circumstances attending this transaction. The jealousies and ill-blood excited in Spain by the nomination by the *Cortes* of Lord Wellington to the command of the Spanish armies is known in this country; the same means were resorted to at Alicant to create differences, and from the moment of my arrival I had strenuously urged the stupidity of that pride which refused obedience to real English Generals, who would act with honour and generosity, and seized on adventurers making of Captains and Lieut.t Colonels Generals subordinate to no authority whatever.

" On the 16th of December the nomination of Lord Wellington was announced in the Diario, and the afternoon of that day between two and three o'clock was chosen by Colonel Adam to draw up a file of soldiers in the square in front of my house, whilst he himself accompanied by Captain d'Aquilar, military secretary to the Commander-in-chief (and a person of no small importance, as will be seen by the annexed letter),* Lieut. Roquefeuille and others broke the outward and inward doors of my house in the rear, and not finding me within, placed a guard of

* *Translation from a printed paper in Spanish.*

" ADVICE TO THE PUBLIC.

" The transportation of grain, and various other articles of provisions, from this port and city of Alicant to the villages and towns beyond the limits of the advanced guards of the allied army, has been so frequent and notorious that there can be no doubt the enemy's army draw considerable supplies to subsist by those resources. In consequence, this is to announce the measures which have been adopted to prevent (for the present) the transportation of all kinds of grain, cod-fish, or any other kind of provisions, beyond the limits occupied by the allied forces. And after this public notice, every person who may be detected acting contrary to these restrictions must expect to have their grain and other provisions detained, confiscating the waggons and mules that may convey said articles when they are met with beyond the limits as abovementioned expressed.

" These restrictions will cease, of course, as soon as the good and welfare of the public service permits it.

" GORGE DE AQUILAR, Mil. Sec.

" Alicant, in the Office of
Nicholas Carratala and Sons."

The whole of this paper, without date, signature and all, was in print: the use it might be turned to in the villages where it was posted, may be easily imagined.

four soldiers with orders to prevent my retaking possession of the drawing-room and adjoining bed-room. Colonel Adam then comes to my mercantile house with Lieut. Roquefeuille, and then in the midst of workmen employed in making alterations for the more convenient accommodation of lodgers, accosts me to tell me, what? Why that he had been looking for me at my house, and had followed me thither merely to say that it was *He* who had forced open my house, and that if I inserted any thing of him in the Diario he would horsewhip me. What could this threat allude to? I had had no intercourse with him for a month, and therefore he could only propose to intimidate me from stating his conduct on this occasion; to leave me exposed to all manner of falsehoods and misrepresentations without being able to state the truth. When I went home and found four soldiers to prevent my taking possession of my best rooms, and when I found they remained there three days without any other person appearing, I could not be sure that Colonel Adam had placed them there, for in fact *they might* have been put there as well as the file of soldiers in front of the house on the afternoon of the 16th without his knowledge, for what was the use of this display of force? If the object was to quarter Mr. King one armed soldier was sufficient, and if Colonel Adam thought it his duty to quarter him he had only to call upon me and tell me so. I was always at the counting-house from eight to twelve in the morning, and from three to nightfall in the afternoon, and the rest of my time at my private house, as was posted up on the door.

"In pursuance of the same plan of intimidation, Colonel Adam came to my private house on the afternoon of the 18th, for the letter addressed to Frederick Adam can only have been a pretext for it. Had its contents been such as to call for serious animadversion, why not immediately on receipt thereof have come to the counting-house from whence it was dated and demanded, or taken satisfaction. But Mr. King would appear to have been disinclined to enter into a lodging so obtained, and Colonel Adam appears to have seized on the pretext of this letter to give a plausible colour to his proceedings. He therefore must have sent Lieut. Roquefeuille to the Town-house to get a billet on my house for himself (which any one would get for a dollar) and thus armed he watched for an opportunity of getting into my house, not by the entrance he had formerly forced, and where the four soldiers were on guard, but through an adjoining warehouse on the ground floor.

"If he had been actuated to these proceedings on account of the letter he had received, he would have attended to my statements that the letter was not intended for him; that it was not signed in my name; and that I would explain it *if properly called* upon; but he was as cool as a cucumber, and notwithstanding appeared resolved to avoid any explanation. After the assault, upon finding that I had no personal objection to Mr. King, and that on the contrary I was inclined to be very civil to him. He was afraid the brutality of his conduct would be made manifest, and therefore further to intimidate me, and to cover his proceedings in the eyes of others he determined to establish himself in my house; for the pretext that Mr. King was not a military man was *ridiculous* after keeping four soldiers in the house for three days and as if to shew me what I had to expect after leaving the room and going up stairs to the rooms the four soldiers had guard of, he sent the sergeant to demand the key of a third room adjoining, and followed him soon after with the rest and took himself forcible possession of the key, after ascertaining that that was my bed-room.

"It must be evident that I could not stay in the house, nor even in the town independently of other circumstances; if I sent any account of his conduct to the Diario, which I resolved on doing as the only way left me of making my case known, though I did not wish to be exposed to his executing his threats.

"This brings me to the second objection.

"Mr. Brougham talked of my not applying to the General—What was I to apply to him about?

"The General (if it was the General) accompanied by another officer saw me collared in the street by two of his soldiers, who could not, or would not tell him by whose orders they were acting, he was standing in the street within 50 paces of the corner which he had only to turn to be in front of my house and see what was going forward, and subsequently of the notoriety of my being driven out of Alicant, and obliged to throw up my establishment with the motives thereof being publicly advertised in the Diario was not sufficient to call his attention to the transaction, would a letter of mine have done it? Colonel Adam was in possession of certain quarters for three months: on a sudden he gets possession of the principal part of the house of a principal inhabitant of the town to receive his friends, and occasionally lodge the Admiral after expelling the owner, and he remains in uninterrupted possession thereof in addition to his former quarters for three months more, placing his name on the door of the house, stating it to be his quarters as Adjutant-general on the side of the little billet, stating he had taken possession thereof by force, and which must have been seen by every one who went in.—Did this conduct call for no investigation?

"To have applied by letter to the General, would have been to give myself the lie; for what was my reason for addressing the letter I did to Frederick Adam, but the con-

victim that my letter would be intercepted? If there had been any grounds for doing so before, there were much stronger now.

"If I could not get a letter delivered into the General's hands before, I could expect it much less now: nor could I now even pretend to insist upon my clerk's delivering it according to my wishes.

"Had I pretended to insist upon seeing the General myself, I would have only exposed myself to fresh insults. Moreover, what was I to complain of? Had I stated Colonel Adam's conduct at the assault, it would probably have been denied: it was so contrived that I could not prove it. Mr. King might have stated he knew nothing of it though in the house, and I should have been laughed at as mad into the bargain. No doubts of this being the result of my complaint can remain in the mind of any one who considered it possible that three persons present at the assault might deny it in a court of justice in this country.

"A general merchant, in order to be able to carry on his business, must be not only safe in his person, but respected in his character.

"In the then situation of Alicant, I could not rely upon any thing being properly done, unless I personally attended at the different offices where my business called me, and saw that it was done.

"Every attempt had been made to interrupt and to annoy me by every species of intrusion, in the expectation of irritating me, or at least taking up my time. For this reason, I was forced to deny myself to all impertinent intruders, and to keep my house shut. As long as in an inside counting-house I could refuse admission to whom I pleased, and that I could be alone at my private house, I could transact my business with punctuality, if not with satisfaction.

"Colonel Adam's conduct deprived me of both resources; by insulting me and threatening me at my counting house, in the midst of persons employed by me. He not only deprived me of the respect I was entitled to, but contributed to intimidate them from following my orders; and by the manner in which my private house was kept open, he subjected me to unwelcome intrusions. As, however, the forcible possession of my house tended, in my opinion, only to bring to issue the legality of the billet brought by Mr. King, I slept very tranquilly under the noses of four soldiers who lay inside my bed-room door. The first night they were English, to whom I ordered a supper; the second they were Germans. This proves that the mere occupation of my house did not drive me from the town. But after the assault, and all the circumstances accompanying and following it; and after knowing that the treatment I had received had been made public, it was impossible for me to carry on my business if I remained in the town; and the only chance of being able to do so in a manner to secure the interests of my correspondents, was by the steps I took to draw on an immediate investigation into the whole of the transactions going on at Alicant, which, besides obtaining me satisfaction for the past, would procure me security for the future; or to endeavour to carry on the business by proxy, till I could get redress.

"In both these attempts I failed. The English General took no notice of the business, notwithstanding his manifest duty so to do, and the state of the place may be inferred from the mere fact of his not finding it *necessary* so to do. I found I could not continue my establishment without the prospect of utter ruin, and I preferred losing a part to the whole. When I landed the property of English merchants into my warehouse, waiting for the removal of the obstacles in the way of a favourable sale created by the English Commissariat, I little thought that an English General would excite the Spanish Governor to lay violent hands on the property of the inhabitants; to what else does General Maitland's letter tend? and I guaranteed the amount against the enemy. When I left the town, and I found I had no security for person or property, I hastened to make sale thereof, though to disadvantage, but yet a part of it was seized. A dozen cargoes might have arrived to my consignment, without my being able to afford them the facilities in the sale, and the protection for the safety of the amount, which the proprietors had a right to expect from me; and therefore I resolved to advertise that I would stop transacting business on the last day of the year.

"If Colonel Adam's conduct had been dictated by passion, would he not have endeavoured to make amends when he saw the effects of it? But the whole business can only be explained in one way. I arrived at Alicant in October from England and Cadiz; I was tolerably acquainted with the laws and customs of both countries, and actuated by the rational wish for liberty that existed *by law* in both countries. I was astonished beyond measure at the situation of things at Alicant; but as the governor had only arrived a few weeks before me, and was a stranger to the place and all the intrigues going on there, and was perfectly well disposed to the new constitution, I trusted he would be able to establish the laws enacted by the Cortes, whose existence seemed scarcely to be known there. For this purpose, I advised him to avail himself of the press as the most efficacious instrument to clear up all misunderstandings; and as I was acquainted with the two printers at Alicant, and had command of some money, I promised to second him, particularly in preventing any differences with the English. The party of intrigue and

corruption left nothing undone to displace this Governor, and at length succeeded; and his recal, which was handed to him by Admiral Hallowell, was attributed to the English, on account of his unwillingness to give up possession of the castle.

"Immediately after this event, the printer of the Diario sent me word he had orders to insert nothing from me without a license from the acting governor Don Luis Riquelme. I sent to him to inquire if he had given such orders; he not only denied it, but gave a marginal order to the contrary on my note. Finding this would not do, I was represented as an enemy to the English, and under this pretext, the printer was intimidated from printing for me things that however only related to the establishment of the Inquisition, and the establishment of the constitution, with some statements of improper things going forward. In consequence of this, I resolved to set up a printing press at my mercantile house, and procured one which had belonged to the Junta of Valencia; I had just set it up, and had applied to Mr. Athy to request Admiral Hallowell would let me have any man on board the ship in the Bay capable of printing.

"I had repeatedly expressed, by conviction from what I saw at Alicant, that the Inquisition, which was thought extinct at Cadiz, was an instrument of the French at the former place. The French had been at Murcia, the chef-lieu of this tribunal, shortly before without molesting it. The Inquisitor-general had gone over to the French at the beginning of the conflict; and as all its dependants were obliged to act implicitly according to the orders they received through a regular channel, without knowing from whom they came; so that nothing was easier, besides its being in the spirit of the Inquisition, to mark the separation from Heretics as strongly as possible. I considered my safety from its agents to depend materially on my having a *house of my own*, and had therefore directed all my views to that end.

"If my letters had been intercepted, and my conduct misstated, the day of reckoning was at hand, as I was in daily expectation of proper printers. It was therefore necessary, to prevent my foiling my intentions, to drive me from Alicant, or to some act of desperation which would give a colour to the stories circulated, or frighten any one from executing my orders for fear of the consequences.

"How Colonel Adam was made an instrument for effecting this I can only surmise. He was acquainted by me with what was going forward during General Caamano's government, and appeared convinced of the propriety of my conduct, and desirous to co-operate, though he said he was obliged to act cautiously, as his friends were known to act with opposition.

"When General Caamano was recalled, he might wish to obliterate any suspicions that he had been unfavourable to the party that appeared triumphant, and to intimidate me from stating any thing that had passed; and I am led to this idea by the circumstance that the only allusion to any thing of the kind in the Diario, was a statement of a declaration made "to the Governor Caamano by Don Felipe Keating Roche, Captain, with the rank of Lieut.-colonel in the service of H. B. M., and Major-general of the national armies, in the presence of Colonel Adam, Adjutant-general of the allied army;" but this had taken place nearly a month before.

"It therefore appears evident to me that Colonel Adam compelled me by his conduct to quit Alicant more than if he had threatened to flog me every day whilst I remained there, in consequence of a mere personal quarrel, and had left me in possession of my house with the means of defence, and that I could not act otherwise than I did, as *a merchant*: as *a gentleman*, I would not have remained twenty-four hours in Alicant after I arrived.

"I have the honour to be most cordially,
"Gentlemen,
"Your obedient humble servant,
"THOS. MOORE.

"63, Montague-square,
19th Dec. 1815.

"P.S. After communicating these observations to my counsel in general, you will please to hand them to Mr. Sergeant Best."

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* I understand that a bill of exceptions might have been tendered on his Lordship's charge, which would have enabled me to carry up the business to the Lords: I am sorry it was not done, as I cannot state myself to be satisfied with the result.

Printed by J. Gillet, Crown-court, Fleet-street, London.

AP AMU XTm
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